IN THE SUPREME COURT FOR THE UNITED STATES

LEON WEBSTER QUILLOIN, Appellant, vs. ARDELL WILLIAMS WALCOTT and RANDALL WALCOTT, Appellees.	CASE NO. 76-6372 APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA CASE NO. 31643

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

INDEX TO JURISDICTIONAL STATEMENT

INDEX TO APPENDICES

TABLE OF AUTHORITIES

STATUTES

JURISDICTIONAL STATEMENT PURSUANT TO RULE 15

INTRODUCTION

Appellant, Leon Webster Quilloin, takes this Appeal from a decision of the Georgia Supreme Court entered January 6, 1977 denying Appellant's objection to the adoption action, Petition for Legitimation, Writ of Habeas Corpus and declaratory and injunctive relief. It is Appellant's contention that the Statutes of the State of Georgia have been unconstitutionally applied to him thereby denying him standing to object to the adoption of his biological child. Appellant submits this statement to show that this Court has jurisdiction of this Appeal and to demonstrate that the questions presented herein are so substantial as to require plenary consideration by this Court.

(A) OPINION BELOW

The opinion and judgment of the Supreme Court of the State of Georgia is as yet unreported. It is attached hereto as Appendix "A".

(B) JURISDICTION

(1)

This action commenced with the filing of the original Petition for Adoption wherein the step-father, Randall Walcott, who had married the biological mother filed his Petition to adopt said Appellant's minor child, Darrell W. Quilloin, then aged 11. The biological mother had given her consent for this adoption pursuant to Ga. Code Ann. §74-403(3). Appellant filed an objection to said adoption as the natural parent of the minor child. The Appellant also filed a Writ of Habeas Corpus to establish visitation rights to said minor child. The Appellant also filed a Petition to Legitimate said child pursuant to Ga. Code Ann. §74-103. That Appellant filed an Amendment to said action after they were consolidated requesting a declaratory judgment that the Statutes of the State of Georgia be declared unconstitutional in their application to the Appellant. That the consolidated action received a hearing on June 23, 1976 before the Honorable Elmo Holt, Judge of the Superior Court of Fulton County, State of Georgia, and the trial court took said case under advisement and on July 12, 1976 entered an Order wherein the trial court cited under Conclusions of Law:

> (1) The child in question being illegitimate, the consent of the mother alone to the adoption is sufficient. See Georgia Laws, 1941, as amended, Ga. Code Ann. §74-403(3); and
>
> (2) The biological father, Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the paternal powers. Ga. Code Ann. §74-203.

thereby applying said State Statutes to the Appellant.

That section (5) of said Order was amended by an Order of the 21st day of July, 1976 which did not in any manner

change the substance of the Conclusions of Law or findings of fact contained in the original Order entered on July 12, 1976. That a copy of said Order is attached hereto as Appendix "C".

From the entry of said trial court's Order, the Appellant appealed to the Georgia Supreme Court, the highest Appellate Court in the State of Georgia, who by a majority opinion dated January 6, 1977, affirmed the trial court. On January 27, 1976, a rehearing was denied. On February 18, 1977, Appellant filed his Notice of Appeal with the Clerk of the Supreme Court of the State of Georgia wherein Appellant seeks to appeal the decision of the Supreme Court of Georgia to this Honorable Court. That a copy of said Notice of Appeal is attached hereto as Appendix "D".

The jurisdiction of this Court on Appeal is invoked pursuant to 28 U.S.C. §1257(2) on the grounds that the validity of a Statute of the State of Georgia is repugnant to the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

The text of the relevant statutes involved is as follows: Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Georgia Code (3028):

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

Georgia Laws, 1941, page 300, as amended, Ga. Code Ann. §74-403:

> "(1) Except as otherwise specified in the following subsections, no adoption shall be permitted except with the written consent of the living parents of a child. Said consent, when given freely, voluntarily, may not be revoked by the parents as a matter of right. In the case of a child 14 years of age, or over, the consent of such child also shall be required, and must be given in writing in the presence of the court."
>
> "(2) Exemption where child abandoned or parental custody terminated.--Consent of a parent shall not be required where a child has been abandoned by such parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from giving such consent and the court is of the opinion that the adoption is for the best interest of the child, or where such parent has surrendered all of his or her rights to said child to a licensed child-placing agency, or to a court of competent jurisdiction for adoption, or to the Department of Human Resources through its designated agents, or where such a parent has had his or her parental rights terminated by order of

a juvenile or other court of competent jurisdiction, or where such parent is dead. Where a decree has been entered by a superior court of this State or any other court of competent jurisdiction of any other State ordering a parent to support a child and such parent has wantonly and willfully failed to comply with the order for a period of 12 months or longer, the consent of such parent shall not be required and the consent of the other parent alone shall suffice in any proceedings for adoption relativ to such child."

"(3) Illegitimate children.--If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the Department of Human Resources."

"(4) Guardian.--If the child has a guardian of its person, the consent of such gardian shall be required, or if the child has been surrendered or committed by court order to a licensed child-placing agency, the consent of such agency shall be required."

"(5) Minor parents.--The parental consent, when required by this section, may be given by the natural parents or parent of the

child sought to be adopted irrespective of whether such natural parent, or either, or both of them, have arrived at the age of 21 years. The parental consent given by the minor natural parents shall be as binding upon them as if such parents were in all respects sui juris."

Only Section (3) of Ga. Code Ann. §74-403 is in issue.

CASES BELIEVED TO SUSTAIN THE JURISDICTION

Stanley vs. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed. 551 (1971); Glona vs. American Guarantee and Liability Insurance Company, 391 U.S. 73, 75-76, 88 S.Ct. 1515, 1516, 20 L.Ed.2d 441 (1968); Levy vs. Louisiana, 391 U.S. 68, 71-72, 88 S.Ct. 1509, 20 L.Ed. 436 (1968), Miller vs. Miller, 504 F.2d 1064 (9th Circuit, 1974).

(C) QUESTIONS PRESENTED BY THIS APPEAL

(1)

Do the provisions of Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Georgia Code (3028), and Georgia Laws, 1941, page 300, as amended, Ga. Code Ann. §74-403(3) violate the due process and equal protection rights of the Appellant under the Fourteenth Amendment to the United States Constitution by creating a presumption that distinguishes and burdens all unwed fathers based upon the legal rather than the factual concept of fathers, thereby presuming that all unwed fathers are unfit to have total or partial custody of their minor children and thereby deny said unwed fathers standing to object to the adoption of their minor biological children while said basic adoption statutes of the State of

Georgia give legal fathers the absolute right of veto over any adoption of their minor children so long as they have not abandoned the child?

(D) STATEMENT OF FACTS AND PROCEEDINGS BELOW

This action commenced with the filing of the original Petition for Adoption wherein the step-father, Randall Walcott, filed his petition to adopt the minor child, Darrell W. Quilloin, aged 11. The step-father was married to the Appellee, Ardell Williams Walcott, and she gave her consent to said adoption of her minor child, Darrell W. Quilloin, who had been born to her and the Appellant, Leon Webster Quilloin. R-1. That the Appellant was admitted to be the biological father of said child, but was never served with said Petition for Adoption, T-67, but was notified of the filing of same by the caseworker for the Department of Human Resources. T-65. That the Appellant filed an objection to said adoption as natural parent of the minor child, R-9. That Appellant also filed a Writ of Habeas Corpus establishing visitation rights to said minor child, R-16. That Appellant also filed a Petition to Legitimate said minor child pursuant to Ga. Code Ann. §74-103, R-20. That by consent of counsel and the Order of the trial court, all actions were consolidated for trial to be referred to thereafter as IN RE: DARRELL WEBSTER QUILLOIN. (This Order was not made a part of the Appellate record). That Appellant also filed an Amendment to said consolidated action raising the issue of the constitutionality of the application of Georgia Code (3028), Georgia Code of 1933, as amended, Georgia Laws, 1943, page 538, as amended,

Ga. Code Ann. §74-203, to this case. R-24. That the Appellant also filed a second amendment raising the issue of the constitutionality of the application of Ga. Code Ann. §74-403(3), Georgia Laws, 1941, page 301, as amended. R-27. That the above-styled action was tried on June 23, 1976 before the Honorable Elmo Holt, and the trial court took said case under advisement and on July 12, 1976, entered an Order wherein the trial court cited under Conclusions of Law: (1) The child in question, being illegitimate, the consent of the mother alone to the adoption is sufficient. (Georgia Laws, 1941, as amended, Ga. Code Ann. §74-403(3). (2) The biological father Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the parental power. (Ga. Code Ann. §74-203). That the trial court thereby applyed said laws to the Appellant. R-33. That section (5) of the Order entered on July 12, 1976 was amended by an Order of the 21st day of July, 1976, which did not in any manner change the Conclusions of Law or findings contained in the Order of July 12, 1976. R-38.

That Appellant appealed from said trial court's ruling to the Georgia Supreme Court.

That on January 6, 1977 the majority of the justices of the Supreme Court affirmed the ruling of the trial court. That by way of explanation of Appendix "A", Chief Justice Nichols' name is typed among the justices that dissented, however, Chief Justice Nichols, before publication of the official decision, struck his name from the dissent, and

thereby joined the majority that affirmed the ruling of the trial court.

That Appellant filed a Motion for Rehearing which was denied on January 27, 1977, however, Justice Ingram then joined Justices Undercofler and Gunter in the dissenting opinion. See Appendix "B" (rehearing card). The final result was therefore a 7 to 3 vote against the Appellant. Therefore, the present status of Georgia decisions, like the decisions coming out of the other highest Appellate courts of the United States are as split as they possibly can be.

The statutory provision of the State of Georgia was co stitut onally questioned, reviewed and passed upon by the trial cou , and therefore, the nature of this case clearly comes under the statutory framework of 28 U.S.C. 1257 (2).

(E) ARGUMENT SUPPORTING POSITION THAT THIS APPEAL PRESENTS SERIOUS AND SUBSTANTIAL FEDERAL QUESTIONS AND THEREFORE THIS COURT SHOULD ACCEPT JURISDICTION AND GRANT PLENARY CONSIDERATION OF THE MERITS

The Statutes in question have in this case deprived the Appellant of due process of the law and equal protection of the law legally. Factually, said Statutes have deprived the Appellant and the Appellant's biological child of each other. This alone should create a substantial federal question for resolution by this Court. The status of other unwed and therefore illegal fathers, however, also needs the protection of this Court's construction of the Georgia Adoption Laws and similar laws from other jurisdictions. The present legal construction confusion that is rampart in the Georgia Supreme Court on this issue is not peculiar to Georgia.

Georgia as hereinbefore stated has upheld the constitutionality of the Statutes in question merely by the change of mind of the Chief Justice of the Supreme Court of the State of Georgia and his switch from the dissent to the affirmation of the trial court's decision. Other courts have routinely applied the Stanley rationale to the adoption setting in cases identical to this one. See Miller vs. Miller, 504 F.2d 1067 (9th Circuit, 1974); Catholic Charities vs. Zalesky, 232 N.W.2d 539 (Iowa, 1975); In re M., 321 A.2d 19 (Vermont), 1974; State ex rel. Lewis vs. Lutheran Social Services, 207 N.W.2d 826 (Wisc., 1973); People ex rel. Slawek vs. Covenant Children's Home, 284 N.E.2d 291 (Ill., 1972).

This case should clearly be controlled by this Court's ruling and rationale contained in Stanley vs. Illinois, 405 U.S. 645, 92 S.Ct. 1208; 31 L.Ed.2d 551 (1971). Stanley held that an unwed father has due process rights and that he is denied equal protection because all other parents except unwed fathers are entitled to due process. Stanley also held that it is not reasonable on public policy grounds to treat unwed fathers differently and thereby deprive them of their rights to equal protection under the law as required by the Fourteenth Amendment to the United States Constitution. This Court held in Stanley that Stanley's due process rights stemmed from the biological fact of paternity.

By its ruling, the Georgia Supreme Court has now ruled that as a matter of public policy the group of children who are illegitimate are distinguishable from legitimate children and married or divorced fathers are distinguishable from unwed fathers. This is contrary to the argument in Stanley (page 654, 92 S.Ct., page 1214). The Georgia Supreme

Court has also held that as a matter of public policy that most unmarried fathers are unstable and neglectful parents. This is also contrary to the arguments of Stanley. (Page 661, 92 S.Ct. page 1218 N 1).

The Georgia Supreme Court has therefore approved this State's ability to draw legal lines as it chooses. This Court has ruled that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not permit this. Glona vs. American Guarantee and Liability Insurance Company, 391 U.S. 73, 75-76, 88 S.Ct. 1515, 1516, 20 L.Ed.2d 441 (1968).

This Court has also ruled that illegitimate children cannot be discriminated against merely because of their birth by declaring unconstitutional a State statute in Louisiana that denied natural but illegitimate children a wrongful death action for the death of their mother. Levy vs. Louisiana, 391 U.S. 68, 71-72, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968). This Court has also ruled that an illegal unwed father cannot as a matter of law be presumed to be neglectful and unfit. This Court held in Stanley vs. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 in answer to this very basic question:

> "Is a presumption that distinguishes and burdens all unwed fathers constitutionally repugnant?"

That as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken away from him, and that by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State

denied Stanley the equal protection of the law as guaranteed by the Fourteenth Amendment.

The Respondent in this Appeal may argue that the Appellant, unlike Stanley, was afforded notice and hearing, however, Appendix "C" the ruling of the trial court, clearly held that the Appellant had no standing to object to the adoption of his biological child under Georgia law, and therefore, the notice (which the Appellant really did not get in legal form) and the hearing was meaningless.

The statutory framework of the Georgia Adoption Statute, Ga. Code Ann. §74-403 provides for consent as a condition precedent to the adoption of a minor child by the parent unless the parent has failed and refused to abide by a superior court order for twelve months or has abandoned the child. If this same criterion were applied to the Appellant in this case, he would have an absolute right of veto to the adoption since the Appellant never abandoned this child. The Appellant did, however, give the minor child his name by signing the birth certificate at his birth and the minor child in this case has always carried the name of the Appellant and was so named in the adoption action "Darrell Webster Quilloin".

The irony of this case is that had the Appellant not given the minor child his name at birth, but had subsequently legitimated said child in accordance with Georgia law prior to the filing of the adoption action, then under Georgia law he would have acquired the right of veto over the adoption in the same manner as a married parent. The Georgia Supreme Court has however, held that this legitimation action must

be filed prior to the adoption.

> "This consent given at a time when she was the only recognized parent, could not be rendered negutory by Smith's subsequent legitimation." See Ga. Code Ann. §74-203. Smith vs. Smith, 224 Ga. 442 (162 S.E.2d 379).

The Georgia Legitimation Statute, Ga. Code Ann. §74-103, merely establishes the right of the child to inherit from the father and the father only. It does not vest in the minor child the full parent-child relationship, and the child cannot inherit through the father. Hicks, Administrator, et al. vs. Smith, et al., 94 Ga. 809, 22 S.E. 153. The child's name was already Quilloin, therefore, the only beneficial effect the Court's legitimation action could have accomplished would have been to allow the child to inherit from the estate of his father. This, however, could have been corrected by non-court proceedings by simply drafting a Will. Therefore, the present status of Georgia law is that the Appellant has been punished for not taking legal action which was totally unnecessary in the first place. This is truly an absurd legal entanglement that counsel for the Appellant cannot adequately explain to his client. The Social Security Act has avoided this illogical position by the terms of Section 216(h)(2) which allows a recognized child to draw from the account of his biological father.

> "Section 216(h)(2) of the Social Security Act...(1) had acknowledged in writing that the Applicant is his son or daughter."

Counsel for the Appellant does not wish to bury his head in the sand and ignore In re: Adoption of Malpicca-Orsini, 36 N.Y.2d 568, 370 N.Y.S.2d 511, 331 N.E.2d 486 (1975),

Appeal dismissed for want of a substantial federal question, 96 S.Ct. 765 (1976). This case is cited at page 5 of the majority decision in this case as its authority for its holding in this case. Therefore, this Court's failure to rule was taken as substantive precedent for the denial of the fundamental rights of the Appellant to his biological child or to at least see and visit with his biological child in addition to the rights of the child to visit with the father. The child testified he would like to visit with the Appellant.

CONCLUSION

That if this Court desires to abandon the rationale of Stanley, it should do so in an affirmative manner so that the State legislators of the United States may promulgate adoption statutes consistent with the rationale of Stanley or the majority decision in this case. The rationale of Stanley is good law and should be applied for the benefit of the Appellant in this case and all those similarly situated. The constitutionality of the Georgia Statutes in question if not ruled upon by this Court will undoubtedly be retested in Georgia courts in the immediate future, and presuming the death, retirement or election loss of the Justices in the majority in this case, the results reached in a new case can reasonably be presumed to be totally different since the margin of victory and defeat for both sides of this case is so narrow. In Miller vs. Miller, 504 F.2d 1067 (1974) at 1068; the Solicitor General of the State of Oregon conceded that the Statute in question (that was identical to Statute here questioned) was out of harmony with the Federal Constitution.

The Attorney General for the State of Georgia refuses to do this. Therefore, this Court must note jurisdiction in this case and give plenary consideration to once and for all dissolve this continuing conflict concerning basic human rights and responsibilities.

Respectfully submitted this 8th day of March, 1977.

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In the Supreme Court of Georgia

Decided: JAN 06 1977

31643. QUILLOIN v. WALCOTT

HILL, Justice.

The constitutional rights of the natural father of an illegitimate child are presented here for review. After the child's stepfather filed a petition for adoption, the natural father sought to oppose the adoption, to legitimate the child and to gain visitation rights. The trial court refused to declare Code Ann. § 74-203, placing all parental power in the mother of an illegitimate, and Code Ann. § 74-403 (3), requiring only her consent for such a child's adoption, unconstitutional. The adoption was granted and the legitimation petition and visitation rights were denied. The natural father appeals.

The child, now twelve, was born in 1964. He has lived with his maternal grandmother or his mother all of his life, although he has visited with his father on occasions. The primary support for the child has been from his mother or his maternal grandparents. His father has provided some support and has given some presents from time to time.

In 1967 the stepfather and the mother were married, and on March 24, 1976, he filed his petition to adopt the child. The

mother's consent to such adoption was attached to the petition. The natural father made no effort to legitimate the child or to obtain visitation rights until after the stepfather filed the adoption petition.

On appeal the natural father argues that Code Ann. §§ 74-203 and 74-403(3) are unconstitutional.

We begin by looking at the statutory scheme of Title 74, Parent and Child, in its entirety. Sections 74-101 through 74-112 are concerned with legitimate children--what children are legitimate, how illegitimate children can be legitimated, etc. Code Ann. § 74-108, entitled "Parental Power" states how a father's parental power shall be lost: " . . . 2. Consenting to the adoption of the child by a third person. 3. Failure of the father to provide necessaries for his child. . . . 5. Consent to the marriage of the child. . . ." Sections 74-201 through 74-205 deal with illegitimate children. Section 74-203, which is under attack, states the rights of the mother of an illegitimate child: "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal (sic) power." Georgia law provides for two ways by which a child can be legitimated by the father: Under § 74-101 by the marriage of the natural father and the mother and the recognition of the child as his, and under § 74-103 by a petition for legitimation.

With the classification of the children as legitimate and illegitimate in mind, we turn to §§ 74-401 through 74-424 involving adoption of children (§ 74-301 et seq. were repealed in 1973). Section 74-403 concerns the consent to adoption required of parents or guardians. Subsection (1) states that no adoption shall be permitted except with the written consent of the living parents of a child. Subsection (2) provides for an exception where the child has been abandoned or parental custody has been terminated. Subsection (3), which is under attack, provides that "If the child be illegitimate, the consent of the mother alone shall suffice."

The equal protection clause of the Fourteenth Amendment requires that all persons be treated alike under similar circumstances and conditions. It does not, however, prevent classification if the distinction is based on valid state interests. In Labine v. Vincent, 401 U. S. 532 (1971), the United States Supreme Court held that Louisiana's intestate succession laws that bar an illegitimate child from sharing equally with legitimate children are not violative of due process or equal protection.

That is to say that a state may make valid classifications of children, of legitimate and illegitimate, if based upon valid state interests.

Georgia has concern for the well-being of all its children. To further the protection and care of its children, Georgia favors and encourages marriage and child rearing in a family relationship. In the case of an illegitimate child, there is no marriage and, most frequestly, there is no father to raise the child; instead there is only a mother. It is reasonable for Georgia to place full responsibility for the illegitimate child on the parent who is present. This placing of full parental power in the mother is consistent with the public policy favoring marriage and the family because the father can choose to join the family, Code Ann. § 74-101, or can petition to legitimate the child, § 74-103.

In the usual case, if the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the state's interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the state could be required to sever his relationship before the adoption could proceed. In addition, since the father has already shown his lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption. Georgia's interest in seeing to the needs of children is served by the statutory scheme. When the illegitimate child's mother consents to adoption, the state and the mother's interest coincide and the child can be placed with a family.

The state's interest is even stronger under the facts of this case. For eleven years the natural father took no steps to legitimate the child or support him. Yet when the stepfather, married to the child's mother, wishes to adopt the boy and accept responsibility for him, the natural father suddenly opposes legal recognition of this family unit.

We find that neither Code Ann. § 74-203 nor § 74-403(3) deny the natural father equal protection of the laws.[1/]

The natural father contends that the Georgia statutes take away his parental rights without due process of law. He relies on Stanley v. Illinois, 405 U. S. 645 (1971). In Stanley, the Supreme Court held an Illinois statutory scheme unconstitutional which required a hearing and proof of unfitness before the state could assume custody of a child of married or divorced parents or

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/1/ See In re Adoption of Malpica - Orsini, 36 NY2d 568, 370 NYS2d 511, 331 NE2d 486 (1975), appeal dismissed, 96 SC 765 (1976).

unmarried mothers, yet required no such showing before separating a child from an unwed father. In Stanley, the father was a de-facto member of the family unit,[2/] and the mother had died. Either of these factual differences would be sufficient to distinguish Stanley from the case before us. We find that Stanley is not controlling and that Code Ann. §§ 74-203 and 74-403(3) violate neither equal protection nor due process.

Judgment affirmed. All the Justices concur except Nichols, C.J., Undercofler, P.J., and Gunter, J., who dissent.

/2/ Georgia recognizes common law marriages but Illinois does not.

31643. QUILLOIN v. WALCOTT.

UNDERCOFLER, Presiding Justice, dissenting.

The majority summarily disposes of the due process issue in Stanley v. Illinois, 405 U. S. 645 (1971) on the facts of that case. It then disposes of the equal protection issue on the basis that it is reasonable to treat unwed fathers differently because state public policy favors adoption. The court thus misconstrues Stanley. Stanley holds that an unwed father has due process rights and that he is denied equal protection because all other parents except unwed fathers are entitled to due process. "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." Stanley v. Illinois, supra, p. 649. (Emphasis supplied.)

The majority dismisses the due process right as merely a de facto right, which accrued from the fact that Stanley had intermittently lived with the mother and his children over an eighteen year period.[1] On the contrary, the Supreme Court held that Stanley's due process rights stemmed from the biological fact of paternity.[2] This is made clear in a footnote: "If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, . . . Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding." Stanley v. Illinois, supra, p. 675, n. 9. (Emphasis supplied.) The Court even approved notice by publication to "All whom it may Concern," where the father was unknown or had disappeared. See footnote 9, supra. Thus the Stanley majority intended to recognize the due process rights of all natural fathers, not merely those who live with their families.

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[1] The children were not then living with the father, but had been left by the father with another couple. Stanley v. Illinois, supra at p. 663, n. 2.

[2] See also Gomez v. Perez, 409 U. S. 535 (1973) (unacknowledged illegitimates have a cause of action against their natural fathers for support); Glona v. American Guarantee Co., 391 U. S. 73, 75-76 (1968).

The majority, I think, also misconstrues the basis of the equal protection claim in Stanley. I agree with the majority that the State has a rational basis in promoting the legitimation of the children of unwed fathers. Further, I know of no public policy of this State favoring adoption by strangers over being raised by one's own father. The crux of the claim in Stanley, however, is that because an unwed father has due process rights in his children, it is a denial of equal protection to treat him differently than other parents.[3] Thus based on the due process right, which the majority does not accept, the equal protection claim is not so easily dismissed on state public policy grounds. On this distinction, I would hold that Code Ann. § 74-403 (3) denies unwed fathers due process and the equal protection of the laws as was held by the Supreme Court in Stanley.

This position is fortified by the remand of two cases to their respective state courts in light of Stanley. Rothstein v.

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[3] "'To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue for the Equal Protection Clause necessarily limits the authority of a state to draw such 'legal' lines as it chooses.' Glona v. American Guarantee Co., 391 U. S. 73, 75-76 (1968)." Stanley v. Illinois, supra, p. 652.

Lutheran Social Services, 405 U. S. 1051 (1971), vacating and remanding, State ex rel Lewis v. Lutheran Social Services, 47 Wis2d 420 (178 NW2d 56) (1970); Vanderlaan v. Vanderlaan, 405 U. S. 1051 (1971), vacating and remanding, 126 Ill. App2d 410 (262 NE2d 717) (1970). On remand, the Wisconsin Supreme Court held, in a case similar to this one, that an adoption which had taken place without terminating the rights, or without the consent, of the unwed father was invalid in light of Stanley. The Wisconsin Court said, "The Supreme Court decided two things: (1) that the denial of a natural father's parental rights to a child born out of wedlock based on mere illegitimacy violated his constitutional right to equal protection of the laws, and (2) that the termination of a natural father's parental rights to a child born out of wedlock without actual notice to him, if he was known, or constructive notice, if unknown, and without giving him the right to be heard on the termination of his rights denied him due process of law." State ex rel Lewis v. Lutheran Social Services, 59 Wis2d 1 (207 NW2d 826, 828) (1973). Likewise, the Appellate Court of Illinois on the remand of Vanderlaan v. Vanderlaan, 9 Ill. App3d 260 (292

NE2d 145) (1972), interpreted Stanley as having recognized that unwed fathers have protectable rights in their children. See also Miller v. Miller, 504 F2d 1068 (9th Cir., 1974); Willmot v. Decker, 541 P2d 13 (Ha., 1975); Forestiere v. Doyle, 310 A2d 607 (Conn., 1973); State ex rel Lewis v. Lutheran Social Services, supra; Slawek v. Covenant Children's Home, 284 NE2d 291 (Ill., 1972); Lee v. Dept. of Social Services, 337 NYS2d 102 (1972); In re Harp, 495 P2d 1059 (Wash., 1972); In re Brennan, 134 NW2d 126 (Minn., 1965). But see, In re Adoption of Malpica-Orsini, 36 NY2d 568, 370 NYS2d 511 (331 NE2d 486)(1975), appeal dismissed, 96 SC 765 (1976).

2. I concur with the majority that Code Ann. § 74-203 arbitrarily placing the parental power of the illegitimate child in the mother, rather than in the father as for legitimate children, has a rational basis in state policy. It is clear from Labine v. Vincent, 401 U. S. 532 (1971) that the State may make such determinations of family relationships. This section may be distinguished from Code Ann. § 74-403 (3) because it does not purport to deprive the other parent of all parental rights.

Because of my position stated in division 1, however, I must dissent.

I am authorized to state that Justice Gunter joins this dissent.

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA 11/22/77

The motion for a rehearing was denied today:

Case No. 31643. Quilloin v. Walcott

Undercofler, P.J., Hunter & Ingram, JJ. dissent

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

"B"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	)	ADOPTION CASE NUMBER 8466
LEON WEBSTER QUILLOIN, Plaintiff	)	CIVIL ACTION NO. C-18672
V.	)	
ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	
LEON WEBSTER QUILLOIN, Plaintiff	)	CIVIL ACTION NO. C-18673
V.	)	
ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	

ORDER

The above-stated adoption matter coming on regularly to be heard; and a Petition for Legitimation of said child, a Habeas Corpus action for visitation rights and two amendments thereto attacking the constitutionality of certain Georgia laws and seeking a declaratory judgment and injunction, all having been filed subsequent to the filing of the original petition for adoption; and the Court hearing all the said matters on a consolidated record for the purpose of allowing the biological father (respondent in the adoption matter and movant in the other said matters) to present any record with respect to any issue or other thing upon which he desired to be heard, including his fitness as a parent; and, after hearing all the evidence and arguments of counsel, together with consideration of briefs filed in all said matters, the Court finds as follows:

"C"

(1) Darrell W. Quilloin, a male, minor child, born December 25, 1964, now eleven (11) years of age; is an illegitimate child of Ardell William Walcott (mother) and Leon Webster Quilloin (father). The said mother and father are not and never have been married.

(2) The mother has had [illegible] possession and custody of said child and the child has lived solely or principally with the mother or maternal grandparents all of the child's life, although the child has visited with the father and the paternal grandparents on many occasions.

(3) The father has provided support for the child irregularly, in the form of medical attention, food, clothing, gifts and toys from time to time.

(4) The principal or primary source of support, on a regular basis, has been the mother or the maternal grandparents.

(5) Overall, the child has been well cared for and has never been in an abandoned or deprived condition.

(6) The mother is now married to Randall Walcott and has been so married since September 16, 1967, and there is a seven-year old child as a result of that marriage.

(7) The mother has recently declined to allow visitation by the father and has declined to accept support by way of toys, gifts, etc., for the child because of disruption of the family and disparity in the treatment of this child and the seven-year old half-brother in the home, which causes problems within the family.

(8) The [illegible] child, Randall Walcott (the mother's husband), filed his petition for adoption of the child on March 24, 1976, and the mother consented to such adoption in writing, same being attached to said petition.

(9) The child, though only eleven years of age, expresses his desire to be adopted by the step-father, Randall Walcott, to change his name to Walcott, as well as his desire to continue to visit the biological father, Leon Webster Quilloin, on occasion.

(10) The biological father made no effort to legitimate the child and filed no petition for legitimation until after the aforesaid petition for adoption was filed by Randall Walcott.

(11) The biological father made no effort to obtain regular visitation rights and filed no Habeas Corpus action to establish visitation privileges until after the aforesaid petition for adoption was filed by Randall Walcott.

(12) The biological father is a single man; he is not seeking custody of the child; he objects to the adoption by Randall Walcott and he seeks visitation rights.

(13) The mother objects to the granting of the legitimation and she objects to visitation rights by the biological father.

(14) The proposed adoptive father, Randall Walcott, is a fit and proper person to adopt the child.

(15) The proposed adoption of the child by Randall Walcott is in the best interests of said child.

(16) The proposed legitimation of the child by Leon Webster Quilloin is not in the best interests of the child at this late date, nor is the granting of the Habeas Corpus relief seeking visitation rights in the best interests of the child, and both should be denied.

CONCLUSIONS OF LAW

(1) The child in question, being illegitimate, the consent of the mother alone to the adoption is sufficient. (Georgia Laws 19[illegible], Georgia Code 74-403(3)).

(2) The [illegible] Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the paternal power. (Georgia Code 74-203).

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDED as follows:

(1) That the final order of adoption be entered on the petition of Randall Walcott, and the Court will enter such order in Case Number 8466 contemporaneously herewith.

(2) That the petition for legitimation filed by Leon Webster Quilloin, Case Number C-18673, be and the same hereby is denied.

(3) That the Writ of Habeas Corpus establishing visitation rights filed by Leon Webster Quilloin, Case Number C-18672, be and the same hereby is denied.

(4) That the first amendment filed by Leon Webster Quilloin, to Case Numbers C-18672, C-18673, and 8644, attacking the constitutionality of Georgia Code Section 74-203 (3028) as amended; Georgia Laws 1943, Page 538, as amended; and Georgia Laws 1856 as amended, be and the same hereby is denied and the Court declines to hold said laws and said Code Section unconstitutional for any of the reasons stated.

(5) That the second amendment filed by Leon Webster Quilloin to Case Numbers C-18672, C-18673, and 8466, seeking a declaratory judgment declaring Georgia Code Section 74-203 (3028) to be unconstitutional, be and the same hereby is denied and the Court declines to declare said Code Sections and any portions thereof and said laws unconstitutional for any of the reasons stated.

(6) That [illegible] and Ardell Williams [illegible] Leon Webster Quilloin to the aforesaid actions be and the same hereby is denied, [illegible] of such injunction [illegible] holds.

This 12 [illegible], 1976.

Edwin Eldt

JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	)	ADOPTION CASE NUMBER 8466
LEON WEBSTER QUILLOIN, Plaintiff V. ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	CIVIL ACTION NO. C-18672
LEON WEBSTER QUILLOIN, Plaintiff V. ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	CIVIL ACTION NO. C-18673

AMENDED ORDER

The Order passed in the above-stated case on July 12, 1976 is hereby amended by striking paragraph five of said Order and inserting in lieu of the said stricken paragraph the following:

"(5) That the second amendment filed by Leon Webster Quilloin to Case Numbers C-18672, C-18673, and 8466, seeking a declaratory judgment declaring Georgia Code Section 74-203 (3028) and Georgia Code Section 74-403(3), Georgia Laws 1941, page 301, as amended, to be unconstitutional, be and the same hereby is denied, and the Court declines to declare said Code Sections and any portions thereof and said laws unconstitutional for any of the reasons stated."

The remaining portions of said Order, including any findings of facts and conclusions of law, are continued in full force and effect.

This 21 day of July, 1976.

Edwin Hoot

JUDGE, S.C., A.J.C.

IN THE SUPREME COURT OF THE STATE OF GEORGIA

LEON WEBSTER QUILLOIN,	)	
	)	
Appellant,	)	
	)	GEORGIA SUPREME COURT
vs.	)	
	)	CASE NO. 31643
ARDELL WILLIAMS WALCOTT	)	
	)	
and RANDALL WALCOTT,	)	
	)	
Appellees.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES PURSUANT TO RULE 10

PART I. (A)

Notice is hereby given that Leon Webster Quilloin, the Appellant above mentioned, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Georgia entered on January 27, 1977 wherein the majority of said court denied Appellant's Motion for Rehearing wherein Justices Undercofler, P. J., Gunter and Ingram, J. J. dissented. That Appellant also appeals to the Supreme Court of the United States from the initial decision in the above-styled case that was decided and entered on January 6, 1977 that affirmed the ruling of the trial court entered on July 12, 1976 and amended on July 21, 1976 in consolidated cases numbered 8466, C-18673 and C-18672 wherein said trial court entered a final order of adoption in Case No. 8466 and wherein said trial court denied Petitioner's Petition for Legitimation filed in Case No. C-18673 and wherein said trial court denied Appellant's Application For Writ of Habeas Corpus in Case No. C-18672, and wherein the trial court applied and declined to hold Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Ga. Code (3028) unconstitutional, and wherein said trial court applied and declined to hold un-
constitutional Ga. Code Ann. §74-403, Georgia Laws, 194[illegible]
[illegible], as amended

This appeal is taken pursuant to 28 U.S.C. 1257(2) in that a question involving the validity of a statute of the State of Georgia has been raised on the grounds that said statutes are repugnant to the Constitution of the United States of America, and the decision of the State Court was in favor of its validity.

PART II. (B)

The Clerk of the Supreme Court of the State of Georgia shall transmit the entire record excepting the Briefs filed by both parties to the Clerk of the United States Supreme Court upon request by the Clerk of the United States Supreme Court or the Justices thereof.

PART III. (C)

The following questions are presented by this appeal:

1. Did the trial court and the majority of the Supreme Court of the State of Georgia err in failing to hold unconstitutional Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Ga. Code (3028), which states:

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

on the ground that said code section and statute violated the due process and the equal protection clause of the Fourteenth Amendment to the United States Constitution in that said statute creates an irrebutable presumption of unfitness to have partial custody on behalf of all unwed fathers and the Appellant?

2. Did the trial court and the majority of the Supreme Court of the State of Georgia err in failing to hold unconstitutional Ga. Code Ann. §74-403(3), Georgia Laws, 1941, page 300, as amended, which states:

> "Illegitimate children. -- If the child be illegitimate, the consent of the mother alone shall suffice"...

on the grounds that said statute is unconstitutional and repugnant to the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution in that said statute creates the irrebutable presumption of unfitness on behalf of all unwed fathers without regard to their former parental responsibility and therefore, denies Appellant and all unwed fathers standing to object to the adoption of their natural, biological children?

Respectfully submitted this ___ day of _____, 1977.

WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

Suite 485
One West Court Square
Decatur, Georgia 30030

(404) 377-0466

CERTIFICATE OF SERVICE

I, WILLIAM L. SKINNER, Attorney of Record for Leon Webster Quilloin, Appellant herein, depose and say that on the ___ day of _____, 1977, I mailed an accurate copy of the Notice of Appeal to the United States Supreme Court in this case to Appellees' attorney and to the Assistant Attorney General for the State of Georgia, by mailing to them by first class mail said Notice of Appeal to the following addresses:

Thomas F. Jones
Attorney at Law
1154 Citizens Trust Building
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303

Carol Atha Cosgrove
Staff Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This ___ day of _____, 1977.

WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

Sworn to and Subscribed
before me this ___
day of _____,
1977.

Notary Public
Notary Public, [illegible], State at Large
My Commission Expires Aug. 31, 1980

Suite 485
One West Court Square
Decatur, Georgia 30030

(404) 377-0466

AFFIDAVIT OF SERVICE

I, WILLIAM L. SKINNER, pursuant to Rule 33(e)(c) of the Rules of the Supreme Court of the United States, do hereby depose and say under oath that I have served the opposing party with a copy of the foregoing Jurisdictional Statement by depositing same in the United States Mail with adequate postage thereon addressed to:

Thomas F. Jones
Attorney at Law
1154 Citizens Trust Building
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303

Arthur K. Bolten
Attorney General for the State of Georgia
by serving Carol Atha Cosgrove
Staff Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This 8th day of March, 1977.

William L. Skinner
WILLIAM L. SKINNER
Attorney for Appellant

Sworn to and Subscribed
before me this 8th
day of March,
1977.

Randal Sorgnard
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Aug. 31, 1980

Suite 485
One West Court Square
Decatur, Georgia 30030
(404) 377-0466

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-6372

LEON WEBSTER QUILLOIN, *Appellant*,

v.

ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT, *Appellees*.

APPEAL FROM THE SUPREME COURT
OF GEORGIA

Jurisdictional Statement Filed
MARCH 11, 1977

PROBABLE JURISDICTION NOTED MAY 31, 1977

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-6372

LEON WEBSTER QUILLOIN, *Appellant*,

v.

ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT, *Appellees*.

APPEAL FROM THE SUPREME COURT
OF GEORGIA

Jurisdictional Statement Filed
MARCH 11, 1977

PROBABLE JURISDICTION NOTED MAY 31, 1977

INDEX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March 24, 1976—Randall Walcott's Petition for Adoption of Darrell Webster Quilloin filed in Fulton Superior Court.

May 11, 1976—Objection to Adoption by natural parent, Leon Webster Quilloin filed in Fulton Superior Court.

May 11, 1976—Petition for Writ of Habeas Corpus to establish the visitation rights to minor child filed in Fulton Superior Court.

May 11, 1976—Leon Webster Quilloin's Petition for Legitimation filed in Fulton Superior Court.

June 23, 1976—Leon Webster Quilloin's Amendment filed in open court in Fulton Superior Court.

June 30, 1976—Leon Webster Quilloin's Second Amendment to consolidated actions filed in Fulton Superior Court.

July 12, 1976—Order of The Honorable Elmo Holt, Judge of the Superior Court of Fulton County filed in Fulton Superior Court approving the adoption, denying the objection, denying the Writ of Habeas Corpus, denying the Petition for Legitimation and refusing to hold the questioned Statutes unconstitutional.

July 13, 1976—Leon Webster Quilloin's Second Amendment filed previously in open court on June 23, 1976 filed on the bar docket of Fulton Superior Court.

July 21, 1976—Amended Order of The Honorable Elmo Holt, Judge, Superior Court of Fulton County filed in Fulton Superior Court.

July 21, 1976—Notice of Appeal by Leon Webster Quilloin to the Supreme Court for the State of Georgia filed with the Clerk of the Superior Court of Fulton County.

July 26, 1976—Amendment to Notice of Appeal filed by Leon Webster Quilloin with the Clerk, Superior Court of Fulton County.

August 18, 1976—Transcript of the hearing of *Quilloin vs. Walcott*, Case No. C–18672 in the Superior Court of Fulton County, State of Georgia filed with the Clerk of the Superior Court of Fulton County, State of Georgia.

September 14, 1976—Enumeration of Errors of Leon Webster Quilloin filed in the Supreme Court of the State of Georgia.

January 6, 1977—Opinion and Judgment of the Georgia Supreme Court affirming the decision of the trial court decided and entered by a majority of said court and filed with the Clerk of the Supreme Court of Georgia.

January 6, 1977—Dissenting opinion filed by two Justices of the Georgia Supreme Court to the decision decided and entered January 6, 1977 and filed with the Clerk, Georgia Supreme Court.

January 12, 1977—Leon Webster Quilloin's Motion for Rehearing filed with Clerk, Georgia Supreme Court.

January 27, 1977—Denial of Leon Webster Quilloin's Motion for Rehearing denied on face of Motion and filed with the Clerk, Georgia Supreme Court.

February 18, 1977—Leon Webster Quilloin's Notice of Appeal to the Supreme Court of the United States filed with the Clerk of the Supreme Court of the State of Georgia.

May 31, 1977—Order of the Supreme Court of the United States granting Appellant's Motion For Leave to Proceed In Forma Pauperis.

May 31, 1977—Order of the Supreme Court of the United States noting probable jurisdiction of this case.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: Application of RANDALL WALCOTT for Adoption of Child	CASE NUMBER 8466

PETITION FOR ADOPTION—filed March 24, 1976

Comes now RANDALL WALCOTT, petitioner in the above named case and shows to the Court the following:

1.

Petitioner is RANDALL WALCOTT, who is a resident of Fulton County, Georgia.

2.

Petitioner is over 25 years of age, and is now married to the mother of the minor child hereinafter referred to and mentioned. Petitioner is of good character and is financially able to support and educate the minor child hereinafter referred to and mentioned.

3.

Petitioner shows that DARRELL WEBSTER QUILLOIN is a male child born on December 25, 1964 to Leon Quillain and Ardell Williams in Chatham County, Georgia. The parents of the child were not married at the time. Petitioner desires to adopt said child into his family in accordance with the laws of Georgia.

4.

Petitioner shows that he desires said child be named DARRELL WEBSTER WALCOTT upon adoption; and, further said child owns no property.

5.

The names of the parents of said child are set out in Paragraph 3 hereof. The residence of Leon Quilloin, the father of said child is unknown; his whereabouts being also unknown. The mother of said child is married to the Petitioner and is now Ardell Williams Walcott and she resides at 2766 Dodson Lee Drive, East Point, Fulton County, Georgia. The child has no guardian.

6.

Attached hereto is the consent of the mother to the adoption of said child by your Petitioner. It is not necessary to attach the consent of the father Leon Quilloin to the adoption of said child because he and the mother were not married at the time of the child's birth.

7.

The age of RANDALL WALCOTT is 39 years and his health is good.

8.

Said child is now in the custody of Petitioner and the child's mother. The mother of said child in her consent and acknowledgement of service enters an appearance herein and joins in the prayers of the petition and asks that the Court enter an order of adoption.

WHEREFORE, Petitioner respectfully prays as follows:

1. That the Court consider this petition for adoption on a day certain not less than ninety (90) days from the date of filing of same.

2. That service and notice of said adoption be held in terms of the law unless service is waived in writing, and including service by publication where necessary.

3. That on the date appointed by the Court for a hearing that he be allowed to adopt said child as provided by Section 74-414 of Georgia Code Annotated as amended and the statutes from which said Section is codified, and that the name of said child shall be DARRELL WEBSTER WALCOTT.

4. That Petitioner have such other relief as the court may deem appropriate.

S/ _____
THOMAS F. JONES
Attorney for Petitioner

1154 Citizens Trust Bldg.
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
404: 659-2200

CONSENT OF MOTHER AND ACKNOWLEDGEMENT OF SERVICE

GEORGIA, FULTON COUNTY.

I, ARDELL W. WALCOTT, do hereby consent to the adoption of my son DARRELL WEBSTER QUILLOIN, by petitioner.

I acknowledge due and legal service of the petition by said RANDALL WALCOTT to adopt said child and expressly waive any and all other and further service of same, including notice of hearing and the time and place thereof. I enter an appearance in said matter and join in the prayers of the petition and ask that the court grant an order as prayed therein for the adoption of my said child by petitioner. The allegations of the petition are true and are admitted by me; the whereabouts of the father LEON QUILLOIN are unknown and I was not married to him at the time of the said child's birth.

This document is voluntarily executed by me and I fully understand its purport.

This 23rd day of March, 1976.

S/ _____
ARDELL W. WALCOTT

2766 Dodson Lee Drive
East Point, Georgia

ORDER FOR HEARING ON ADOPTION #8466

GEORGIA
FULTON COUNTY

The within and foregoing petition of

RANDALL WALCOTT

petitioners, being presented seeking the adoption of the minor child therein named, said child to be known when adopted as

DARRELL WEBSTER WALCOTT

It is considered, ordered and adjudged by the Court that said application be set down and made returnable before this Court at 9:00 o'clock A.M. on the 23rd day of June 1976. In the meantime, let service be perfected upon the party or parties whose written consent to the adoption is required, unless service of said petition and notice has been, or will be, duly waived in writing. The Clerk is directed within fifteen (15) days from the date of filing of this petition, as by law provided, to forward a conformed copy of the Petition and Order to the proper Department, together with a letter requesting that a complete investigation and report be made, as by law provided.

Any and all persons objecting to the entry of an Order of Final Adoption shall file such objections in writing at least ten (10) days prior to the hereinabove assigned date for hearing. Last date for filing objections is 13th day of June, 1976.

This the 24th day of March, 1976.

S/ _____
JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

FINAL ORDER OF ADOPTION #8466

GEORGIA
FULTON COUNTY

It appearing to the Court that heretofore

RANDALL WALCOTT

petitioner, filed in the Office of the Clerk of this Court a petition seeking the adoption of the minor child therein named to be known as

DARRELL WEBSTER WALCOTT

when adopted, and it further appearing that all formalities of law have been complied with and it further

appearing that said proposed adoption is for the best interest of the child, and the Court being satisfied that a final Order of Adoption should be entered;

It is thereupon considered, ordered and adjudged that this Final Order of Adoption be entered and the Court hereby declares said child to be the adopted child of petitioner and capable of inheriting his estate, and that the name of said child shall hereafter be

DARRELL WEBSTER WALCOTT

and that the relation between the said

RANDALL WALCOTT

and the adopted child shall be as to their legal rights and liabilities as parent and child, each having the right or inheritance as provided by law.

It is further ordered, at the election of the adoptive parent, that the place of birth of said child on the new birth certificate shall be shown as Atlanta, Fulton County, Georgia.

This the 12 day of July, 1976.

S/ _____
JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

RANDALL WALCOTT, *Petitioner,* *Ex Parte.*	ADOPTION FILE NO. 8466

OBJECTION TO ADOPTION BY NATURAL PARENT, LEON WEBSTER QUILLOIN
—filed May 11, 1976

COMES NOW Leon Webster Quilloin as Objector and respectfully shows to the Court the following:

1.

That Randall Walcott has filed in this Court an action to adopt the minor child, Darrel W. Quilloin, born December 25, 1964, aged 11, and that said Randall Walcott is apparently married to Ardell Williams Walcott who is the natural mother of said child.

2.

That Objector Leon Webster Quilloin objects to said adoption for the reason that he is the natural and biological father of said Darrel W. Quilloin, and that he has supported and raised said child for approximately one-half of said child's life and does and hereby continually tenders to the natural mother of said child a sufficient amount of support to continue to support said child until he reaches the age of 18.

3.

That said natural child has known and recognized Objector as his biological and natural father, and it is not in the best interest of said natural child that his rights to said child be severed in this adoption action.

WHEREFORE, Objector Leon Webster Quilloin respectfully prays that his objection to this adoption be sustained, and said adoption petition dismissed.

S/ _____
WILLIAM L. SKINNER
Attorney for Objector,
Leon Webster Quilloin

Suite 485
One West Court Square
Decatur, Georgia 30030
(404) 377-0466

IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

LEON WEBSTER QUILLON,
Plaintiff,
vs.
ARDELL WILLIAMS WALCOTT,
Defendant,
Respondant.

CIVIL ACTION
FILE NO. C 18672

WRIT OF HABEAS CORPUS ESTABLISHING
VISITATION RIGHTS TO MINOR CHILD
—filed May 11, 1976

COMES NOW the Plaintiff in the above-styled action and respectfully shows to the Court the following:

1.

That the Plaintiff is the biological father of Darrel W. Quilloin, born December 25, 1964, and that the natural biological mother of said child is Ardell Williams Walcott who resides in Fulton County, Georgia, and is therefore subject to the jurisdiction of this Court.

2.

That the Defendant Ardell Williams Walcott is illegally restraining the Plaintiff from obtaining the partial custody by way of visitation privileges, with the minor child Darrel W. Quilloin, and that it is in the best interest of said Darrel W. Quilloin that partial custody, in the form of visitation privileges, be awarded to said Plaintiff Leon Webster Quilloin.

3.

That Plaintiff Leon Webster Quilloin shows that he has raised and supported his natural and biological child for more than half of said child's life, and he will continue to do so voluntarily or at the direction of this Court.

WHEREFORE, Plaintiff prays that a Writ of Habeas Corpus issue with a Rule Nisi thereon directed to the Defendant, Respondant, Ardell Williams Walcott, requiring her to produce the body of the minor child,

Darrel W. Quilloin before this Court, and that this Court issue an Order specifying visitation rights and partial custody in the Plaintiff, Leon Webster Quilloin, and that Petitioner Leon Webster Quilloin have such other and further relief as the Court deems proper in the premises.

S/ _____
WILLIAM L. SKINNER
Attorney for Plaintiff,
Leon Webster Quilloin

Suite 485
One West Court Square
Decatur, Georgia 30030
(404) 377-0466

C–18672

ORDER

The above and foregoing Application for Writ of Habeas Corpus having been read and considered, the same is hereby ordered filed, and it is further ordered that Ardell Williams Walcott is hereby ordered and commanded to produce the body of Darrel W. Quilloin before this Court and The Honorable Elmo Holt or the presiding judge on the 23rd day of June, 1976 at 9:00 a.m. o'clock and that Ardell Williams Walcott show cause why an Order should not be entered by this Court specifying visitation rights and privileges in the Plaintiff, Leon Webster Quilloin, and thereby awarding him partia¹ custody of said minor child.

This 11th day of May, 1976.

S/ _____
JUDGE, Fulton Superior Court
Atlanta Judicial Circuit

(CERTIFICATE OF SERVICE—omitted in printing)

IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

LEON WEBSTER QUILLOIN,
Plaintiff,
vs.
ARDELL WILLIAMS WALCOTT,
Defendant,
Respondant.

CIVIL ACTION
FILE NO. C18673

PETITION FOR LEGITIMATION—filed May 11, 1976

COMES NOW the Petitioner in the above-styled action and respectfully shows to the Court the following:

1.

That Petitioner resides within Fulton County, Georgia and is therefore subject to the jurisdiction of this Court pursuant to Ga. Code 74–103.

2.

That Petitioner is the natural biological father of Darrel W. Quilloin born December 25, 1964, aged 11.

3.

That the natural biological mother of said child is Ardell Williams Walcott.

4.

That in the best interest of the child and also pursuant to Ga. Code 74–103, Petitioner requests that he be allowed to legitimate Darrel W. Quilloin so that Darrel W. Quilloin could inherit from him in the future and be considered as his legitimate child, and that the surname of said Darrel W. Quilloin continue as it now appears on said natural child's original birth certificate.

WHEREFORE, Petitioner prays:
(a) That summons issue;
(b) That this Court enter an Order pursuant to Ga. Code 74–103 legitimating said child in accordance with the laws of Georgia, and that said child's name continue to be Darrel W. Quilloin.

S/ _____
WILLIAM L. SKINNER
Attorney for Petitioner

Suite 485
One West Court Square
Decatur, Georgia 30030
(404) 377-0466

ORDER

The above and foregoing action to legitimate a minor child having been read and considered, the same is hereby ordered filed, and it is further ordered that the biological mother of said child, Ardell Williams Walcott show cause before Judge Elmo Holt or the presiding Judge on the 23 day of June 1976, at 9:00 a.m. o'clock why said petition should not be granted as prayed.

This 11th day of May, 1976.

S/ _____
JUDGE, Fulton Superior Court
Atlanta Judicial Circuit

(CERTIFICATE OF SERVICE—omitted in printing)

IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON STATE OF GEORGIA

Leon Webster Quilloin *Plaintiff* *vs.* ARDELL WILLIAM WALCOTT *Defendant* *Respondent in* *Habeas Corpus* *Proceedings*	CIVIL ACTION FILE NO. C-18672
RANDALL WALCOTT *Petitioner* *Ex Parte*	ADOPTION FILE NO. 8466
LEON WEBSTER QUILLOIN *Plaintiff* *vs.* ARDELL WILLIAMS WALCOTT *Defendant* *Respondent in* *Petition for* *Legitimation*	CIVIL ACTION FILE NO. C-18673

AMENDMENT

COMES NOW, Leon Webster Quilloin, and amends each and every pleading filed by him in the above styled actions by the following:

1.

That Georgia Code Section 3028—(Ga. Code of 1933 as amended) Ga. Laws 1943 p. 538 as Amended, Ga Code 74–203, which states: (Ga. Laws 1856 as amended.)

"Mother's rights
the mother of an illegitimate child shall be entitled to the possession of the child unless the father shall legitimate him as before provided. Being the only recognized parent, she may, exercise all the parental power."

is unconstitutional, as or if applied by this Court to the above styled action, in that an application of said

law to the natural father, Leon Webster Quilloin, would violate his right to equal protection of the laws and would therefore be in violation of the 14th Amendment to the United States Constitution in that he would be denied the same rights given to the natural parents and fathers of minor children merely because he was never married to the natural mother; and he would be denied due process of the law by being denied the right to assert his fitness as a parent to have partial custody of said child in the form of visitation privileges or rights with said child in violation of the Due Process Claim of the 14th Amendment to the United States Constitution

WHEREFORE, Leon Webster Quilloin, prays that this amendment be allowed and that he have the relief originally prayed for.

S/ _____
WILLIAM L. SKINNER
Attorney for Leon Webster Quillon

Service of the above amendment is hereby acknowledged.

S/ _____
THOS F. JONES
Attorney for Ardell Walcott
and Randall Walcott

ORDER

The above and foregoing amendment having been read and entered the same is hereby allowed and Ordered filed subject to objection.

This 23 day of June 1976.

S/ _____
JUDGE, Fulton Superior Court

IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

LEON WEBSTER QUILLOIN, *Plaintiff*, *vs.* ARDELL WILLIAMS WALCOTT, *Defendant*, *Respondant in Habeas Corpus Proceedings.*	CIVIL ACTION FILE NO. C-18672
RANDALL WALCOTT, *Petitioner*, *Ex Parte.*	ADOPTION FILE NO. 8466
LEON WEBSTER QUILLOIN, *Plaintiff*, *vs.* ARDELL WILLIAMS WALCOTT, *Defendant*, *Respondant in Petition for Legitimation.*	CIVIL ACTION FILE NO. C-18673

LEON WEBSTER QUILLOIN'S
SECOND AMENDMENT TO
THE ABOVE-STYLED ACTIONS
—filed June 30, 1976

COMES NOW Leon Webster Quilloin and amends each and every pleading hereinbefore filed by him in the above-styled actions by the following:

1.

That Georgia Laws of 1941, Page 300, as amended, Ga. Code §74–403(3) which states:

> "Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice". . .

is unconstitutional as or if applied by this Court to the above-styled action, in that an application of this portion of Georgia Laws of 1941, Page 300, as amended, Ga. Code §74–403(3) to the natural father, Leon Webster Quilloin, would violate his right to due process of the law and equal protection of the law and would therefore, be in violation of the Fourteenth Amendment to the United States Constitution in that he would be denied the same rights given to other biological parents of minor children in and to said children merely because he has never legally contracted a marriage with the biological mother of said child or children, and said Leon Webster Quilloin would be denied due process of the law as guaranteed by the Fourteenth Amendment to the United States Constitution by therefore, being denied the right to assert his fitness as a parent to have the partial custody of his biological child in the form of visitation rights with said child all in violation of the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution and to classify all unwed fathers as unfit parents as a matter of law, would amount to a State created classification not based upon reason generally, or in particular, as applied in this case in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

2.

That for the reasons before stated, there exists between the parties to this action a justiciable controversy that requires the entry by this Court of a declaratory judgment.

3.

That for the reasons before stated, this action brings in controversy the constitutionality of Georgia Statutes and therefore, the Attorney General for the State of Georgia should be served with this action and allowed to intervene.

4.

That for the reasons before stated, Leon Webster Quilloin has no complete and adequate remedy at law unless this Court enjoin the biological mother, Ardell Williams Walcott and the step-parent, Randall Walcott, from proceeding in the above-styled actions. That unless said injunction is entered, said Leon Webster Quilloin will suffer irreparable harm in that he will be denied future visitation rights and companionship with his minor child, Darrell W. Quilloin.

WHEREFORE, Leon Webster Quilloin prays:

(a) That this Amendment be allowed subject to objection;

(b) That a declaratory judgment issue declaring that portion of Georgia Laws 1941, Page 300, as amended, Ga. Code §74–403(3) which states:

> "Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice". . .

unconstitutional and repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution;

(c) That this Court enter an injunction enjoining Randall Walcott and Ardell Williams Walcott from proceeding under Georgia Laws 1941, Page 300, as amended, Ga. Code §74–403(3) and Ga. Code §74–203, Georgia Code 1933, (3028);

(d) That this Court enter a declaratory judgment declaring that portion of Ga. Code §74–203, Georgia Code 1933, (3028) which states:

> "Mother's rights—The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

unconstitutional and repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution;

(e) That the Attorney General for the State of Georgia be served with this Amendment and the preceeding pleadings in this action in that a Statute of the State of Georgia is constitutionally questioned pursuant to Ga. Code §110–1106, Georgia Laws 1945, Page 137, as amended.

S/ _____
WILLIAM L. SKINNER
Attorney for Leon Webster Quilloin

Suite 485
One West Court Square
Decatur, Georgia 30030
(404) 377-0466

IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

LEON WEBSTER QUILLOIN, *Plaintiff,* *vs.* ARDELL WILLIAMS WALCOTT, *Defendant, Respondant in Habeas Corpus Proceedings*	CIVIL ACTION FILE NO. C-18672
RANDALL WALCOTT, *Petitioner, Ex Parte.*	ADOPTION FILE NO. 8466
LEON WEBSTER QUILLOIN, *Plaintiff,* *vs.* ARDELL WILLIAMS WALCOTT, *Defendant, Respondant in Petition for Legitimation.*	CIVIL ACTION FILE NO. C-18673

ORDER

The above and foregoing Amendment having been read and considered, the same is hereby allowed and ordered filed subject to objection.

This 30 day of June, 1976.

S/ _____
ELMO HOLT, Judge
Fulton Superior Court
Atlanta Judicial Circuit

IN THE SUPERIOR COURT
OF FULTON COUNTY
STATE OF GEORGIA

TRANSCRIPT OF HEARING—June 23, 1976

RANDALL L. WALCOTT

having first been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q Would you state your name for the record, please.
A Randall Walcott.
Q What is your age, Mr. Walcott?
A Thirty-nine.
Q Are you presently married to Ardell Walcott?
A Yes, sir.
Q How long have you been married to Ms. Walcott?
A September 16, 1967.
Q Did Ms. Walcott have a child when you were married to her?
A Yes.
Q What's the name of the child?
A Darrell Webster Quilloin.
Q What is the child's present age?
A Be twelve this December.
Q Do you desire to adopt Darrell at this time?

MR. SKINNER: May I stop for one minute, Your Honor. Is Darrell here today?

THE COURT: You mean the child?

MR. SKINNER: Child. I had filed a habeas corpus, Judge, which I think requires the child to be brought in.

THE COURT: I think so.

MR. JONES: The child is not here.

MR. SKINNER: I would want Your Honor to hear from the child.

MR. JONES: The child is under fourteen.

THE COURT: Well, the habeas corpus required, I understand that the child be produced. I don't know where the pleadings—

I think the order of May 11 did require you to produce the child in court today, signed by Judge Andrews.

MR. SKINNER: Judge, we would definitely want you to hear from the child because I think that might be good probative evidence. The child is eleven and capable of testifying, I think.

MR. JONES: Your Honor, I would apologize to the Court for the oversight. The child is not here at this time. I was under the impression since the child was under fourteen, his presence would not be required.

THE COURT: Consent is not required, but production of his body is required under the order of the Court.

MR. SKINNER: Your Honor, I have no objection to continuing this case where the child can be brought in. We have witnesses all the way from Savannah.

THE COURT: You want to suspend while they go get the child and bring him up here?

MR. SKINNER: Yes.

THE COURT: All right, I will go on and, it's ten o'clock, and take up the calendar and get as far as I can with that.

MR. JONES: Your Honor, would it be possible to get as far as we could right now.

MR. SKINNER: I have no objection.

MR. JONES: I'm afraid it will be a lengthy proceeding and we go get Mr. and Ms. Walcott, at least have their testimony.

THE COURT: Go ahead.

BY MR. JONES:

Q Do you desire to adopt Darrell at this time?
A Yes.
Q How long has Darrell lived with you and Ms. Walcott?
A Since '69.
Q Since 1969?
A Yes, sir.

BY THE COURT:

Q You were married in '67?
A Yes.

BY MR. JONES:

Q Mr. Walcott, where are you employed?
A Eastern Airlines.
Q What is your position?
A Aircraft service.
Q What is your pay?

A $233 a week.
Q Ms. Walcott also employed?
A Yes.
Q In your opinion, is this income adequate to support and educate Darrell?
A Yes.
Q Do you desire Darrell have your last name?
A Yes.
Q In the time that Darrell has lived with you, have you had an opportunity to help in raising the child?
A Yes, sir.
Q What sort of activities have you and he engaged in?
A The Little League baseball, basketball, pro sports.
Q Does the family attend church regularly?
A Yes.
Q Mr. Walcott, are you in good health?
A Yes.

MR. JONES: That is all I would have from Mr. Walcott.

THE COURT: Any cross-examination?

MR. SKINNER: Yes.

* * * * * *

CROSS-EXAMINATION

BY MR. SKINNER:
Q You say you were married in 1967?
A Yes.
Q But the child didn't live with you until 1969?
A Yes.
Q Where was he living?
A Savannah.
Q With who?
A His grandmother.
Q Was that the paternal or maternal grandmother?
A I didn't understand your question.
Q Was it her mother?
A Her mother.
Q Is that Ms. Smith?
A Yes.
Q Is she here today?
A Yes.
Q Okay. Why did the child not live with you until 1969, and was it by choice or did the child prefer to

stay in Savannah during that time?
A He was staying with his grandmother and we decided to send for him and bring him up and live with us.
Q In '69?
A Yes.

MR. SKINNER: That is all I have.

THE COURT: All right.

* * * * * *

ARDELL WILLIAMS WALCOTT

having been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. JONES:
Q Ms. Walcott, I remind you you are under oath. Would you state your name.
A Ardell Walcott.
Q Are you presently married to Randall Walcott?
A Yes.
Q How long have you been married?
A Since 1967.
Q Are you the mother of Darrell Webster?
A Yes.
Q What was his date of birth?
A December 25, 1964.
Q Where was he born?
A Savannah.
Q Who is the child's biological father?
A Leon Quilloin.
Q Were you married to Mr. Quilloin at the time of the child's birth?
A No.
Q Were you married to him at any other time?
A No.
Q Has Mr. Quilloin ever supported Darrell?
A No.
Q Has he ever provided anything of a material nature for Darrell?
A Yes, he has.
Q Sort of explain to the Court.
A Holidays, birthdays, birthdays give him gifts on

several other occasions but no specific support.
Q Has Mr. Quilloin visited Darrell on a regular basis?
A Not a regular basis. He's seen him on occasions but it was not regular.
Q Could you give us some idea about how often and a little more information about these visits?
A Well, after Darrell came to live with us, Darrell would go to visit with my mother during the summer and he would see him at that time. And he even seen him at Christmas on several occasions.
Q Ms. Walcott, do you consent to this adoption and you have signed papers to that effect?
A Yes.
Q Has Mr. Quilloin ever attempted to obtain visitation privilege prior to this time?
A No.
Q As far as you know, has he ever attempted to legitimate the child?
A No.
Q Let's sort of go into where Darrell has lived from the time he was born up to the present.
A Okay. He lived with my mother until he came to live with us in New York after we got married.
Q And during this time did you support the child?
A Yes, I did.
Q In what amount?
A Well, regular payments. I used to send her money weekly, you know, I don't know exact amount.
MR. JONES: That is all I have.

* * * * * *

CROSS-EXAMINATION

BY MR. SKINNER:
Q When Darrell was born, Ms. Walcott, your name was Williams, was it not? Ardell Williams?
A Yes.
Q Where were you living when Darrell was born?
A With my mother.
Q Is that Ms. Willie Mae Smith?
A Yes.
Q Okay. And approximately when was it in Darrell's age classification when you moved to New York?
A He was a year old.

Q And you moved to New York and left him in Savannah?
A With my mother, yes.
Q Okay. All right, during Darrell's first year of life, did Mr. Quilloin help out with medical expenses and so forth for Darrell?
A Yes, he helped out.
Q Did he take him to the doctor?
A Yes, I would say he did, yes.
Q And is it or is it not true at one time Mr. Quilloin set you up in a business, kind of a convenience store?
MR. JONES: Your Honor, I object to that as being irrelevant to the issues.
THE COURT: What's the relevancy?
MR. SKINNER: Your Honor, I think it would link up, I think the relevancy as I would expect to prove is that he set her up in business of approximately a thousan dollars and told her to give fifteen dollars per week from that business to care for Darrell.
THE COURT: Ask her that question.
THE WITNESS: That is not true. He set me up in business, but there was no stipulation I wasn't, in fact, there wasn't enough profit from the business to buy myself anything or to buy the child milk or anything. There was just not enough profit.
BY MR. SKINNER:
Q You didn't give your mother anything out of that business?
A There was just nothing to give.
Q And he didn't tell you to give her anything?
A No, he did not.
Q Did you give your mother milk, food, et cetera, for the child?
A He occasionally gave milk, yes. Food, I can't specifically say he gave any food, no.
Q Okay. All right, during the time that Darrell was a child, do you know who Mabel Dawson is?
A Yes.
Q Who?
A Leon's mother.
Q During the time that Darrell was a child, did Mabel Dawson care for Darrell some parts of his life?
A He would visit her, but I would not say that she

cared for him on a regular basis.
Q How often would he visit her?
A Well, there was no specific amount of time. He'd go, I couldn't even say. It wasn't a weekly thing if that is what you mean. It wasn't a regular type thing. He just go sporadically; was just not any set time.
Q Did Darrell, to your knowledge, spend any time with Mr. Quilloin when he was a baby?
A Yes, he spent time with him.
Q Did he spend quite a good deal of time?
A What do you mean?
Q About fifty or sixty percent of his time.
A No.
Q During the time that you were in New York, did you send money back to your mother?
A Yes.
Q How much did you send?
A Well, I was making about, I guess about sixty-five dollars a week, and I would say approximately fifteen or so dollars. I can't be specific because I don't remember.
Q How often did you come back from New York to see Darrell?
A When I first left I was back there in six months after I got my first vacation, and I was back there, I would guess every six months, nine months until I came and picked him up to go live with me.
Q Did you take Darrell at any time to live with you in New York?
A Yes, I did.

MR. JONES: Your Honor, I hate to break in, but I don't really understand the connection of this line of questioning with the issues that we have before us.

MR. SKINNER: I hope to connect it.

THE COURT: He says he will connect it. I don't know.

BY MR. SKINNER:
Q Did Mr. Quilloin come to New York to pick up Darrell at your request?
A Not at my request, no.
Q Tell us what happened about him coming to New York.
A I was working at the telephone company and one day I got a call, and when I came back I returned

the call. It was him. And he said he found out where I had been working and that he knew where I lived and that he was coming to get Darrell. And at the time, one of the main reasons my leaving Savannah was I was afraid of him. I really was afraid of him. When he called and told me where, he found out where I was working and where I lived, I was still afraid of him. And he showed up one day at our apartment. And he came with some other fellows, some guys who I had seen in Savannah before. He said that he had come to get Darrell. Okay. I was still frightened and I called my mother and I discussed it with her. And he promised me he would be taking the child back to my mother, which he did. And he drove back and he took the child.
Q You let him have the child to take back to your mother, is that what you are saying?
A Yes.
Q Back to Savannah.
A Exactly.
Q How many people were living in your apartment at that time in New York?
A Three.
Q Three?
A Uh huh.
Q Was it efficiency, one room apartment?
A It was not.
Q It was not?
A Huh uh.

MR. JONES: Your Honor, once again, I don't understand the relevance of this question.

MR. SKINNER: Your Honor, direct examination of my client it would be relevant as to why the child was brought back from New York and I think it would be connected.

THE COURT: What are you attempting to show that the mother is unfit?

MR. SKINNER: No.

THE COURT: What are you trying to show?

MR. SKINNER: As to why, it would be our contention that the reason that Ms. Walcott did not object to the child coming back is they were living in cramped conditions in New York at that time.

THE COURT: Why don't you ask her that

question—did you consent because you were living in cramped quarters.

BY MR. SKINNER:

Q Did you?

A No, I did not.

THE COURT: As I understand it, said she didn't consent. Said she was afraid of him. Isn't that what her testimony is?

MR. SKINNER: Yes.

THE WITNESS: Uh huh.

BY MR. SKINNER:

Q And you say Mr. Quilloin brought the child back and let the child live with the maternal grandmother?

A Yes.

Q And the child did not part-time live with him and the, and his mother, Ms. Dawson?

A No, he would visit her and he would spend the night but he did not spend any great amount of time with her.

Q Is it not true then that the child stayed in Savannah with you in New York until it was about five years old?

A No, he started school when he was five. He started elementary school when he was five. And he came to live with us, I guess just as he was five, right after his birthday.

Q Isn't it true Mr. Quilloin enrolled this child in the St. Mary's School in Savannah?

A Yes.

Q What is St. Mary's School?

A It's a kindergarten.

Q Well, he went to kindergarten, I don't know what kind of school.

Q This is result Mr. Quilloin enrolling and paying the tuition?

A He did send the child to kindergarten.

Q For the entire year?

A Yes.

Q And is it not true that Mr. Quilloin personally picked up the child and took him to school during that time?

A No, he went by taxi.

Q You don't know, you were not in Savannah.

A I know he didn't pick him up.

Q Is it not true the end of the summer vacation period after the kindergarten year of the child, that Mr. Quilloin called and asked if the child was coming back?

A I don't remember if it was the end of that. I just can't remember. I can't say.

Q Okay. Did Mr. Quilloin know, after he took the child back that summer, did Mr. Quilloin know where you were living or do you know?

A When we were living in New York?

Q Yes.

A I really don't know.

Q Did you come back to Savannah with your new husband when the child was approximately seven and a half years old?

A We visited Savannah. I don't know how old the child was.

Q At that time did Mr. Quilloin ask you then if he could have some visitation rights with the child?

A We did not even see him when he was down there.

Q When, in point of time after this, then did you see Mr. Quilloin, do you recall?

A I don't remember.

Q When did Mr. Quilloin start visiting with or being with the child? Can you just give it in chronological age of the child?

A Maybe the summer when he was six.

Q When he was six?

A Yes, I would say. Maybe the summer when he was seven.

Q That would be the summer the child would be spending the summer with your mother?

A With my mother.

Q Okay. Did Mr. Quilloin attempt to give the child clothes and toys and things during this time?

A Yes.

Q Did he in fact give him clothes and toys?

A He did.

THE COURT: During what time?

BY MR. SKINNER:

Q When the child was say six to eight?

A Uh huh, yes.

Q When the child was nine, did Mr., had you moved then to Atlanta?

A We moved to Atlanta in '73, so I guess he was about eight.
Q Eight?
A Yes.
Q Okay. All right. Did you place the child on an airplane and fly him to Savannah for Mr. Quilloin to visit with him when he was eight or nine?
A I cannot definitely say. He's been on a plane before. I would not have sent him directly to him, no. Now, I can't say I have never put him on a plane to go to Savannah.
Q Did the child by himself fly to Savannah during this period, can you recall that?
A He has flown before alone. Now, whether it was that period of time or when it was, I cannot say. I don't remember.
Q Where has he flown from and to that you recall?
A He's flown from, I honestly cannot say because I don't remember.
Q Did Mr. Quilloin pay for these flights?
A My husband works for the airline. To specifically say that he, he's never sent us any money to buy a ticket. Now, I honestly, I don't remember the incident that you are sp[illegible]ng of. Now, if, maybe you can refresh my memory [illegible]th something else.
Q Was there a time say on Easter vacation Mr. Quilloin purchased a ticket and allowed the child to fly to Savannah to be with him?
A Maybe if you ask my husband if he remembers. I don't remember offhand.
Q Did Mr. Quilloin ship a 10-speed bicycle up to Atlanta?
A Yes, he did.
Q Did you and your present husband pick that bicycle up for Darrell?
A We did.
Q Isn't it true when the child was ten and a half last summer, that Darrell stayed in Savannah with Ms. Dawson for three weeks to a month, now this is the past summer 1975.
A Okay, I'm trying to remember because my mother was here last summer.
Q She was living in Atlanta?
A She was living in Atlanta last summer with us.

Q I'm speaking of Ms. Dawson.
A I know, I'm trying to remember, because usually he would go to Savannah and live with my mother and he would visit with Ms. Dawson. What I'm trying to remember if he went to Savannah to stay last summer. I don't think so, because my sister's kids were here last summer and I really don't know.
Q Was Darrell at home all last summer of 1975?
A Yes.
Q Never went anywhere?
A Not as far as I can remember.
Q Were you working in the summer of 1975?
A I was.
Q Where were you working?
A C & S Bank.
Q Who cared for Darrell while you were working?
A My mother.
Q That is Willie Mae Smith?
A Uh huh.
Q When was it that you told Mr. Quilloin that you would no longer allow him to see Darrell?
A He called me one day at work and he said something about, this was recently, you know, what about visitation rights. He just point blank said that. And so I said, you know, there won't be any.
Q Was that in March '76?
A Possibly.
Q Why did you decide at that point to stop allowing Mr. Quilloin to see Darrell?
A Well, Darrell is, he is well-adjusted, you know, he's not a perfect child, nothing is perfect. But everything is fine. I mean he gets along fine with my husband. We have a good family life. We do things together and it's just disrupted when he leaves to go and come back. You know, if he has to readjust, and it just doesn't seem to be a good situation when he returns.
Q When Darrell saw Mr. Quilloin in say the summer of '75, did Darrell come back and tell you that he wanted to live with Mr. Quilloin?
A Darrell has never told me he wanted to live with Mr. Quilloin. And I don't remember if he saw him in the summer of '75.
THE COURT: I'm going to have to interrupt this

proceeding. I will resume later. Does anybody have any objection to my going ahead and calling this calendar while you are going for the child?

MR. JONES: No.

MR. SKINNER: No.

THE COURT: All right.

(Recess.)

THE COURT: All right, go ahead. I believe you were cross-examining the mother.

MR. SKINNER: Yes, Your Honor.

BY MR. SKINNER:

Q Ms. Walcott, how old is Darrell now?
A Eleven.

BY THE COURT:

Q What?
A Eleven.

BY MR. SKINNER:

Q Ms. Walcott, you don't contend that Darrell has ever been abandoned by you, do you?
A No, I don't.
Q You don't contend that anytime during Darrell's life was he ever left without support, food?
A No.
Q Or anything?
A No.
Q Is that right?
A Yes.
Q And Darrell has always been provided for by someone?
A Yes.
Q Is that true?
A Right.
Q So, he's never been abandoned?
A No.
Q By you or anyone else?
A No.

MR. JONES: I'd like to object to that. I think that question could be considered to call for legal conclusion. Ms. Walcott is not really qualified to answer that question.

THE COURT: What do you say?

MR. SKINNER: Your Honor, my question is has Darrell ever been left without necessities. And she says no.

THE COURT: You say that is an improper question?

MR. JONES: No, I think part of that question was whether Darrell had been abandoned by anybody.

THE COURT: That is a legal conclusion and I will sustain objection to that. But let stand the question whether he's ever been without necessities.

MR. SKINNER: All right.

BY MR. SKINNER:

Q Your answer was that he was never without necessities, support, clothes, food, shelter, et cetera?
A No.
Q When you found that you was expecting Darrell prior to his birth, was an abortion discussed with anybody?
A Yes.
Q Who was it discussed with?
A Mr. Quilloin.
Q Is it not true abortion was decided against by Mr. Quilloin?

MR. JONES: Your Honor, I can't see the relevance of this at this time.

THE COURT: What's the relevance?

MR. SKINNER: Your Honor, I think shows continued interest of Mr. Quilloin and the child. He wouldn't approve of the abortion.

THE COURT: What right under the law does he acquire by having an interest in the child?

MR. SKINNER: I think the same rights as if he had been married to her.

THE COURT: Have you got any case law?

MR. SKINNER: I think if you read close reading of Stanley vs. Illinois says that is the law.

THE COURT: That may be the law of that case. Is that an Ohio case or Illinois?

MR. SKINNER: Well, United States Supreme Court case, Your Honor. The law in that case, basically held that the question that was asked in that case is a presumption distinguished and burdens all unwed fathers constitutionally repugnant and of course they went on to find that it was. And the rationale, with the full reading of the case it says like the rationale contained about the third or fourth page of the decision to say equal protection should be the legal rather than the

biological relationship is to avoid the issue. For the equal protection clause necessarily limits the authority of the State to draw such legal lines as it chooses.

THE COURT: As I understand that case, what that case says or stands for is that the father has a right to be heard. Has a right to a hearing to establish whatever right he may have under the law. And that is the purpose for this hearing right now. I'm hearing for that purpose. Give him an opportunity to establish on the record what rights he has. And I have a completely open mind on it. But we are not dealing with an aborted child. We are dealing with a relative eleven-year-old child today.

MR. SKINNER: Your Honor, I won't proceed on that any further. I was trying to show this man's continued interest in this child even prior to its birth. He wanted the child and that was the only reason that I thought that that would be relevant, just to show his continued interest in the child.

THE COURT: Can't he testify to that?

MR. SKINNER: I think he can. And I won't proceed any further with her if that is Your Honor's decision.

BY MR. SKINNER

Q Ms. Walcott, have you and your present husband ever discussed a divorce?

A No, we haven't.

MR. JONES: Your Honor, once again, I would have to object.

THE COURT: What's the relevancy of that?

MR. SKINNER: Well, she says they hadn't and therefore it's not going to be relevant. But if they had discussed divorce, if they have had marital discord, that may affect the approval or disapproval of the adoption, it seems to me whether or not they have got marital disorders today.

THE COURT: And the evidence is she stopped the visitation rights that your client was exercising in order not to disrupt the present marriage, not to disrupt the present household.

MR. SKINNER: Well, I won't proceed on that line.

THE COURT: All right, go ahead.

BY MR. SKINNER:

Q Then, is it true that you feel that it would not be in

the best interest of Darrell to be seeing Mr. Quilloin?

A That's right.

Q And why do you feel that way?

A I feel that he's happy, well-adjusted little boy now. And we are all doing things together. And to have it disrupted by him, being separated from his brother and his family, and then coming back and having to readjust and that type thing is just not good for him.

Q Are you saying that Mr. Quilloin and his family kind of spoil the boy, is that what you are saying?

A Well, not necessarily because he's been, they have had a hand at spoiling, all grandparents do. But not necessarily, it's just, just disrupts the whole family life when he leaves and comes back.

Q When he leaves and comes back?

A Uh huh.

Q Tell us how does it disrupt the family life if you would specifically, please.

A Well, the child is gone and his brother is seven years old. And he wants to know where his brother has gone. How come he can't be there with him. And then Darrell comes back. And then, you know, he's discussing all the material things that he could very well have had, you know, mini bikes.

Q You mean discussing the things that he got from Mr. Quilloin?

A Not necessarily got, but possibly could get. And, you know, I think the things that we provide for him are the things that he needs and he gets what he needs and a lot of things that he wants. But I think that that is enough for him. I don't think that he needs anything from the outside. I think he's happy with what he gets.

Q Are you saying then that what he receives from Mr. Quilloin kind of creates an overbalance where he's receiving more material things than the seven-year-old?

A That is an aspect.

Q And you feel that is not good for seven-year-old?

A It's not good for either one of them.

Q Ms. Walcott, you don't contend that Mr. Quilloin is a person of bad character, do you?

A I don't have any judgment on his character.
BY THE COURT:
Q What's that?
A I don't have any judgment on his character.
BY MR. SKINNER:
Q You don't have any contention one way or the other as to that?
A No.
Q Did Mr. Quilloin try to give some Chirstmas presents to Darrell in 1975, this past December?
A Yes.
Q What happened as a result of him trying to give the gifts? Did Darrell get them?
A No, he didn't.
Q Why?
A My husband and I decided it wasn't necessary. He had gotten Christmas gifts from us, just didn't want him to have them.
Q You and your husband decided that he shouldn't have the Christmas presents that Mr. Quilloin tried to give to him?
A Yes.
Q Was that again because you thought it might be an overbalanced situation that would affect the seven-year-old?
A That was one aspect, yes.
Q What happened to the Christmas presents?
A I have never seen them. I don't know.
Q How do you know that they were tendered?
A He told that they were.
Q You do not contest the fact that he is the biological father, do you?
A No.
Q Do you object to him legitimating the child so the child could inherit from him?
A Yes.
Q Why do you object to that, Ms. Walcott?
A Just like I said, I just feel that he is getting what he needs and what he wants and he's happy, why complicate it. You know, he's happy. We just want a complete family with no disruptions, just a complete family, you know, that type of thing.
Q And you would not want Darrell to have the material things that Mr. Quilloin could give him?

A No, I don't.
MR. SKINNER: That is all I have.
THE COURT: Anything further?
MR. JONES: Your Honor, I'd like to clear up a few things.

* * * * * *

REDIRECT EXAMINATION

BY MR. JONES:
Q Ms. Walcott, I think you mentioned at sometime in the past Mr. Quilloin had provided for, been responsible for some medical care for Darrell?
A Yes.
Q Would you say that that is the majority of the medical care that Darrell has received since birth?
A When Darrell was three months old he had a hernia operation and he paid, you know, the medical bills for that.
Q When was the last time Mr. Quilloin provided some medical care for him?
A I guess at that time.
Q When?
A Three years old.
Q I think you mentioned this morning Mr. Quilloin in the past provided some clothes for Darrell.
A Yes.
Q Has he provided the majority of the clothes that Darrell has?
A No.
MR. JONES: That is all I have.

* * * * * *

RECROSS-EXAMINATION

BY MR. SKINNER:
Q Ms. Walcott, I will hand you Plaintiff's Exhibit P-1 and ask you if this is not the hospital report from that hernia operation that you've just spoken of?
A I would suppose. Well, Dr. Collier was the doctor.
Q Is that right?
A Yes.
Q Is he the one that operated on him?

A No, he didn't operate but he was one of the doctors.
Q Okay. Ms. Walcott, I am going to hand you a collective Exhibit P-2 and ask you if you will examine these photographs, please.
A Uh huh.
Q Okay. Is it not true that these photographs are of Darrell?
A They are.
Q How old was he then?
A I can just guess. I guess he was about one and a half, about two I guess.
Q Okay. Do you recognize some of the other people in these photographs?
A Some of them.
Q Are these either mutual friends or friends of Mr. Quilloin or relatives?
A Well, I saw his brother on there, friend of his. This is in my mother's house. Looks like his brother there. And this is my mother's front yard.
Q Not all of those pictures taken at your mother's house?
A No, I specified.
Q Two of them. How many of them were taken at your mother's house or front yard?
A I'm not sure. This one looks like it may be but this one definitely, and maybe that one and this one.
Q Okay. Has Darrell ever been known to go by the nickname known as say Sloopy?
A Yes, but I didn't give it to him.
Q You didn't?
A No.
Q Do you know who gave it?
A Probably Leon.
Q Okay. Was he called Sloopy by a lot of his friends?

MR. JONES: Your Honor, I have objection. I can't see the relevancy.

THE COURT: What's the relevancy?

MR. SKINNER: I think it shows the close relationship between the father and son. Nickname given by the father held on to him.

THE WITNESS: It's not held on.

MR. JONES: I think we are talking about things that happened very long time ago.

THE COURT: I think that's correct.

MR. SKINNER: Your Honor sustain objection to the relevancy?

THE COURT: What his nickname was?

MR. SKINNER: Yes, sir.

THE COURT: Yes, I sustain the objection.

BY MR. SKINNER:

Q Now, you state that Darrell did not spend any time at all this past summer in Savannah?
A I told you that I couldn't remember specifically.
Q You are not saying he didn't. You are just saying you don't remember?
A Right. I do not remember exactly.

MR. SKINNER: That is all I have.

THE COURT: Anything else?

MR. JONES: Yes, Your Honor, we'd like to call Ms. Smith.

* * * * * *

WILLIE MAE SMITH

having first been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q Would you state your name, please.
A Willie Mae Smith.
Q Are you related to Ardell Walcott?
A My daughter.

BY THE COURT:

Q What was your answer?
A My daughter.

BY MR. JONES:

Q What is your address?
A 1001 Carter Street, Savannah, Georgia.
Q You're familiar with Darrell Quilloin?
A Yes, really, uh huh.
Q Did Darrell live with you for a period of time after his birth?
A Yes, sir.
Q How long was this?
A Up until about, he was five years old, he was living with me until kindergarten.

Q During this time did Mr. Quilloin provide regular support for Darrell?
A No, he didn't, you know, support him like, you know, he didn't support him.
Q Did he provide anything?
A At times.
Q Would you say these were very irregular?
MR. SKINNER: Your Honor, that is calling for a conclusion.
THE WITNESS: Not regular.
MR. SKINNER: What's irregular and what's regular?
THE COURT: If you are going into it, what—
BY MR. JONES:
Q What did he do, just tell the Court in your own words exactly what support Mr. Quilloin did provide during that period.
A Well, at times give me about fifteen dollars. That was the highest I would get. But it wasn't week, it wasn't every month.
Q Could you give us just some idea about how many times total during that period?
A Huh uh, because always when I need it, you know, I write her.
Q How was Darrell supported during this time?
A By his mother.
Q Did she send payments from New York?
A Every week.
Q Did you contribute to some funds for Darrell?
A Yes.
Q During the period that Darrell was living with you, did Mr. Quilloin visit on a regular basis?
A Sometimes visit him, come and get him and keep him about a day and then bring him back.
Q Could you tell the Court about how frequent these visits were?
A When he have time. I mean, you know, he was a busy man and he doesn't have time. And his mother was sickly, said she wasn't able to keep a little child regular.
MR. JONES: That is all I have, Your Honor.

* * * * * *

CROSS-EXAMINATION
BY MR. SKINNER:
Q Were you living in Savannah in the summer of '75?
A No, I was here.
Q Were you living in Atlanta then?
A Yes.
Q Is it not true that during the summer of '75 that Darrell went to Savannah for either two or three weeks?
A He went there for two weeks because he went there to stay, you know, but when I went and picked him up it was time for school.
Q He did spend some time this past summer in Savannah, is that right?
A Yes.
When I went there he was to my daughter's house.
Q But I mean he spent some of the time there with Mabel Dawson and Mr. Quilloin?
A Yes. But when I got there he was with my daughter.
Q Who is your daughter?
A Barbara Richardson.
Q And the purpose of Darrell going last summer was to visit with his paternal grandmother, Ms. Dawson, and Mr. Quilloin, wasn't it, would you answer?
A Yes.
Q Ms. Smith, was your daughter ever set up in business by Mr. Quilloin?
A She had a little confessionary.
Q And you knew that he paid the money for that, didn't you, to set it up?
A Yes.
Q Did you ever get any money out of that business?
A She was in Savannah then. She hadn't left Savannah, and she took care of the child then herself.
Q Did she give you any money out of that business to help support Darrell?
A She ain't made nothing to give me too much.
Q Isn't it not true that most of the time that Mr. Quilloin would bring over milk and things for Darrell?
A Milk?
Q Yes.
A No.
Q He never brought any milk or anything over there

for Darrell when he was a baby?
A Not as I knows of.
Q Did Mr. Quilloin take Darrell to the doctor?
A Yes, he would take him to the doctor if he needed to go.
Q Okay. How would he go to the doctor, would you call him and tell him he was sick and needed to go or what would you do?
A I would mostly take Darrell to the doctor.
Q But you know that Mr. Quilloin took him a good bit of the time, don't you?
A No.
Q Do you recall whether or not Mr. Quilloin enrolled Darrell in kindergarten?
A Yes, he did.
Q Did he take him to school?
A No, he didn't.
Q He didn't?
A Huh uh.
Q He didn't pick him up?
A Huh uh.
Q Who did?
A Mostly he had to come in a cab, or I go pick him up in a cab.
Q Who paid for the cab fare?
A Me. Leon said he was busy.
Q And he never, he just paid the tuition, cab fare or done anything?
A No.
Q Now, do you recall when Mr. Quilloin went to New York to get the child back?
A I didn't know he went there but I know he brought the kid back.
Q He brought him back to you?
A Uh huh, right, to my house.
Q During the time that you had Darrell and had him in your possession, isn't it true that Darrell would spend a good bit of time over with Mabel Dawson?
A No. I told you she said she wasn't able to keep a little child. You know, he would go see her by the day and her other son would bring him back in the afternoon, or Leon when he have time he would bring him back. But Ms. Dawson said she wasn't able to be bothered with a little child all the time.

Q Would he stay a day or two or three?
A A day.
Q Ma'am?
A A day.
Q How much did you say that Ms. Walcott would send from New York to support the child?
A The whole time, you mean?
Q I mean on a weekly or monthly basis, how would she sent it?
A About twenty-five dollars a week.
Q Okay. She was making about sixty-five dollars a week at the time?
A I don't know how much she was making.
Q Did Mr. Quilloin, when he didn't know where Darrell was, ever contact you and try to find out where Darrell was?
A When he found out Darrell had left town, he come in and asked me where did I let him go. I said well, his mother wanted him and I took him to her.
Q Does Darrell pretty much recognize as his grandmother and father biological father, Mr. Quilloin, he knows Mr. Quilloin is his father, doesn't he?
A Yes.
Q He knows Mabel Dawson is his grandmother, doesn't he?
A Yes, he do.
Q Ms. Dawson and her family are relatively pretty good people in Savannah, aren't they?
A As far as I know.
Q They get along with Darrell well, treat him well?
A Yes.
Q They always have?
A Yes, as I knows.

MR. SKINNER: That is all I have.

THE COURT: Anything else?

MR. JONES: No, please go back outside.

THE COURT: Call your next witness.

MR. JONES: Your Honor, I guess at this time if we want to hear from Darrell it would be proper.

MR. SKINNER: Your Honor, I don't have any objection. You could hear from Mr. Quilloin and his witnesses and Darrell last.

THE COURT: Are you through?

MR. JONES: That would be all.

THE COURT: All right, go ahead, Mr. Skinner.

* * * * * *

LEON WEBSTER QUILLOIN

having first been duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. SKINNER:

Q Mr. Quilloin, you were sworn, were you not?
A Yes.
Q State your name for the record then.
A Leon Webster Quilloin.
Q Mr. Quilloin, are you the biological father of Darrell Quilloin?
A Yes, I am.
Q When was Darrell born?
A December 25, 1964.
Q Born on Christmas?
A Uh huh.
Q Christmas and birthday at the same time?
A Yes.
Q Mr. Quilloin, were you ever married to the biological mother of this child?
A No, I wasn't.
Q Would you just tell me and tell the Court from the time Darrell was born what you did to help Darrell or support Darrell?
A Well, starting from birth all his medical expenses at the hospital, the doctors' bills I had the drug store, used to put him on Similac about a year and a half, special milk. He was low in iron or vitamins. But anyway, he had to drink Similac in his milk formula. And then the man from the dairy used to go by every day and carry regular milk. But he wouldn't drink regular milk on a regular basis because he needed a Similac. And from one year and one month, maybe a few breaks in between, I provided everything for Darrell, clothes, medical expenses, milk, whatever they need Ms. Smith would call me. And if I didn't carry it myself, my brother Charlie or some of them guys, Sam, he got it regardless. And after he got, I think about a year and a half,

she got him up in New York and he must have lived there maybe two or three weeks and I went to pick him up and bring him back to Savannah with the understanding that he would stay sometime with her mother and sometime with my mother. And I think maybe once he was, the second and third summer of his life his mother came and visited him. And I think the fourth summer he went up with either his grandmother or her sister or somebody carried him up there to spend the summer with him. And then come back. Once he was four and a half, anyway, that is September, he was four years and nine months and I remember having a hassle with him, you know, about getting him into school. They said he couldn't enroll at four years and nine months. He had to wait until he was five. So, by me going to the same Catholic school and I talked with the priest and sister and all, and they allowed him to start in the kindergarten.

And as far as providing transportation for him to and from school, if I didn't go, I must have had seven or eight people working for me. Somebody out of that seven or eight worked for me went and picked him up or I had a special cab. He didn't have nothing else to do but go pick him up from the school, either carry him back out to her mother's house or bring him to the store to me or my mother's house.

Q Stop now and tell us was the cab furnished by you?
A Right. Don't even know the man's name. In fact, since passed but verbal agreement between him and myself. If I call he didn't have to come and get the money from me. Deliver the child to either my mother's house or her mother's house and then he would see me the next day or the following day and he'd collect the fare.
Q Did you sometimes take the child yourself to kindergarten?
A Right.
Q Did you ever provide milk or food or anything for Darrell at the home of Ms. Smith?
A Right, the dairy, he went over every other day delivered pasteurized milk. And the drug store would provide Similac by the case. I think Similac

twenty-one or twenty-three cents a can on the grocery shelf. If I bought it by the case, maybe it was nineteen cents a can. So I would go ahead and get it by the case.

Q During this period of time I'm speaking of from the time the child was born until the time the child was about five and a half years old, would you tell the Court approximately how long Darrell spent with you and your mother?

A Sixty percent of the time. See, I was in the nightclub business really and what I did, he would spend maybe forty percent of that sixty percent of the times directly with me. So what I did inside the nightclub, I built a nursery for him, you know, with soundproof walls where he could sleep because we didn't close until two o'clock. If he was asleep at two o'clock we remained out in the nursery. If not, I'd get him and carry him to my mother's house. We took care of him. Robert Moss, Charlie, this guy Charles, he's in the nursery there with Darrell and him and Darrell is asleep on the couch.

Q You're referring to the picture that we have introduced or will?

A Right. What it was, each time, you know, one of us would, you know, just say like Sarge worked the package store, I said Sarge, I let you off two o'clock carry the, Darrell to the barber shop, do this and carry him to grandmothers, one of the two.

Q One of the two grandmothers?

A Right, whichever the situation, Ms. Smith would always be home. Mother would more or less be quite a bit in the daytime. She worked with some political organization, you know, there around election time. Going out knocking on doors, getting people to vote.

Q Did you go to New York to pick up Darrell at some time?

A Right.

Q And if so, would you tell the Court the surrounding facts as to why you went?

A After he was there, I think maybe a week or something like that, I don't know whether she called me or her mother. I don't know exactly how I got the message to pick him up. I can't truthfully say. But

it was by mutual agreement that I would go and pick him up from up there. Really I, just an opinion of mine, that she didn't have time to care for the kid. I don't know how many of them there, a lot of girls in the house and I don't think—

MR. JONES: Your Honor, I have to object he said it's an opinion.

THE COURT: I sustain the objection.

THE WITNESS: The main thing it is, that no one had time for the child.

MR. JONES: Well, I have to object to that too, Your Honor.

THE COURT: I sustain the objection to that.

BY MR. SKINNER:

Q Did you go to New York to pick up the child?

A I did.

Q Would you tell me what the living arrangements were that you actually observed when you arrived in New York?

A It was too many of them in that one house to have a little baby in there.

Q Just tell us how many, do you recall exactly?

A Probably four or five.

Q What size apartment was it?

A Efficiency.

MR. JONES: Your Honor, once again I have to object. It's been stated that Mr. Quilloin is not contending Ms. Walcott is not a good mother or not provided properly for Darrell.

MR. SKINNER: That is true, Judge. All we are trying to do, Judge, to show his continuing interest in the best interest of the child. There is no contention she is unfit and we never have contended that.

THE COURT: All right.

BY MR. SKINNER:

Q Did you bring the child back from New York?

A Right.

Q And who was with you on that trip?

A Charles and Robert, Robert Moss.

Q Was any opposition by Ms. Walcott to your bringing the child back?

A None whatsoever.

Q Did she want you to bring it back?

A The only thing she asked me to wait, when I got

there. I called her at work and talked with her and told her I was ready to carry him. She told me to wait until she knocked off, she wanted to see him before he left.

Q And you actually saw her there then?

A Yes.

Q In New York. Did she help pack Darrell's things to come back?

A I don't know whether she did or not but the clothes were packed.

Q Were they packed when you got there or after you got there?

A I don't know. It was such a long waiting period between the time we arrived and waiting around for her to get off. You know, I don't really remember, but I don't remember no one packing them I will put it that way.

Q On the drive back, who cared for Darrell on the road?

A Well, I did the driving and Robert Moss and he, I think held him from New York till somewhere in Virginia because he was asleep most of the time.

Q Did you pay the tuition for Darrell to be enrolled in the St. Mary's School?

A Right. That is private school in Savannah. Like I said, I went to the same Catholic school and I wanted to try to provide good education. They were strict on you, that is why I put him in there.

Q All right. Historically, from the time the child was born until he was five and a half, isn't it true Ms. Walcott would visit the child in the summer mostly?

A Uh huh.

Q What happened at the end of the summer when the child was finished kindergarten?

A When he finished, he went to New York to visit her and then, you know, from kindergarten, if you pass, you go right to the first grade. So, he was supposed to start school the 5th of September and I must have contacted him somewhere around the beginning of September and asked about him getting back to school. And she said well, he wasn't going to come back to school there. And she had previously enrolled him in school already. And that was the end of the conversation.

Q When is the next time you saw Darrell, could you give us point of time when you saw Darrell?

A Maybe seven and a half. Right after that, they disappeared.

Q Did you look for them?

A Yes.

Q You say you found him when was seven and a half. How did you find him?

A Seven and a half. I would go by mother's house and question her about—

Q Are you speaking of her mother?

A Ms. Smith. I'd go by and ask about him and how he was doing and all. And she would kindly answer, you know, kind of candidly. And this particular time when I went by I was asking questions about him and she said well, he's all right because he is right here in the backyard now. I said why didn't you call me. She said Ardell said she don't want you to do nothing. I got her to call Ardell and Ardell said I could keep him for one day. And I got him and we went, you know, around to my mother's house. I think he stayed more than one day. It may have been two days. But what it was, her mother was trying, I guess, satisfy me and try, you know, just keep harmony. Well, he stayed more than one day. And then I was still trying to find, you know, ask different ones questions. And then I don't know when they came from New York to Atlanta, but it was all, surprise to me.

Q When the child was in Savannah, did you go to see him or visit him often? I'm speaking around the time he was eight and a half years old?

A He's just eleven now. So that, that summer before that, so now he's been in Savannah two summers since then.

Q Okay. Did you ever pay the plane fare for the child to be flown from Atlanta to Savannah?

A Well, this past summer he caught the bus and met me in Macon. And I picked him up in Macon. That is when he spent the summer, maybe two or three weeks in Savannah of '75. April of '75, purchased a ticket in Savannah, Delta Air Lines first class. They said traveling unaccompanied by an adult you have got to get him first class. I paid round trip. He flew

from Atlanta I think on a Thursday, stayed maybe Friday, Thursday or Friday. Anyway, just a--the main purpose was to get in Savannah and buy some clothes and a few necessities. I did that and put him back on the plane and he was gone again. And how all this came about, I since moved to Atlanta and I called Ms. Walcott, I said well, I'm in Atlanta now, why don't you bring the kid up to Five Points and maybe show around. She said she's not going to do that no Saturday or no other Saturday. I says never in the summer? No.

Q Have you ever offered or agreed to support Darrell?
A Yes.
Q Have you actually contributed items of clothing and food, et cetera?
A Always.
Q Did you bring Darrell a 10-speed bicycle?
A Yes, and flew it up here on the airlines.
Q How old was Darrell then?
A Nine.
Q What kind of toys and things did you buy for Darrell Christmas, December 1975?
A Mostly in clothes. I just got him a, you know, these little like a model car or something. I bought him a couple of model cars because he seemed interested in fixing those things. I bought him a couple model cars, I think about four pair of trousers, four or five shirts and they came out with something like a fatigue army suit, you know, for kids and I thought he would like that. And I got him that. And I got him one dress suit and which he never got. I called Ms. Walcott, told her where she could pick them up. I brought them up here and carried them to a friend of mine's place of business. She said she would pick them up but she didn't pick them up that day. And I called her and asked her maybe next couple of days. She said her husband objected to it. What puzzled me, they object to some things and some things they didn't. I imagine according to mood.

MR. JONES: Your Honor, I move to strike that last comment.

THE COURT: All right, sir.

BY MR. SKINNER:

Q Mr. Walcott, do you have a close personal relationship with Darrell, I'm sorry, Mr. Quilloin, do you have a close personal relationship with Darrell?

A Yes, we meet together, like I say, I don't think he would remember me from one year and one month to five and a half, but this last two and a half years, yes.
Q How did Darrell develop the nickname of Sloopy and why did he develop that?

MR. JONES: Your Honor, I would object to that as being irrelevant.

THE COURT: Well, it probably is irrelevant but I want him to have a full hearing.

A Well, when he was born he was born premature and he had, we had to pick up an incubator for him to be in. And then after, I think he stay in that for a month. And then after that he had a bad cold. And after that hernia, you know, just one thing right after another. And at that time, that was just popular song on the radio, say hang on Sloopy. Refer to him like that. It was just some sort of type of intuition for me or something to just stick that with him because he was quite sick, you know, say the first nine months I believe it was. And he wasn't but three and a quarter pounds at birth. You know, just uphill struggle all the way.
Q Mr. Quilloin, are you ready, willing and able to pay whatever child support payments to Ms. Walcott as the Court will tell you to do?
A Yes.
Q What type of work do you do now?
A I'm self-employed.
Q Would you tell us approximately what your earnings are per week?
A Two and a half.
Q Two hundred and fifty dollars?
A Two hundred and fifty dollars, plus my fringe benefits over there. Say, we open mini mall over in Decatur and it's set up where I'm more or less the working partner of it. And I realize salary out of it. Then once equity is built up, I will be able to draw some of that. If I ever wanted to sell my portion, sell it to the other two partners or whatever.
Q Are you willing to support Darrell, pay support payments?

A Always. The contention was I never could keep up with him. By the time I found him, they would move again. Never was no question about the support, because I have always been able to provide for him. And if I really wasn't interested in the kid, right from the birth right up through now, I could have let these people stay up in Savannah. They are not up here just free.

Q Mr. Quilloin, in the event the Court was to award some visitation privileges, when would you like to see Darrell?

A Well, I imagine maybe in the summer or once every six weeks or something, because I realize that with him maybe seeing me it does call disruption. But that still doesn't remove the fact he's my kid. That still doesn't remove the fact just by changing his name he is going to forget me.

Q You don't want to do anything to harm him?

A No. In fact, I talked with Ms. Walcott. I said I must have some type of right to the kid or some say or something. And evidently she had talked to a lawyer, because she told me, said well, you don't have any rights. And that is when I told her, I said well, I will just have to see what I can do. I'm not just going to sit back—this week you can see him, next week you can't see him. I'm just not going to stand for it. If I have got some rights, then I want the rights. Then if I don't have the rights, maybe when he's fourteen or maybe when he's eighteen, just never know.

Q Mr. Quilloin, have you ever discussed with Ms. Walcott Darrell's conduct or how he was growing up?

A Yes.

Q Can you tell specific discussions when they were and what, as to whether he was going to college or not?

A Yes, I was asking her, you know, about his interest, you know, you can just determine by the way the kid is going just by the tinkering with little things. I was trying to determine what way, what interests him and what didn't. And I think she said he don't like science, you know, in school. I think that was his low grade in school. But math and

things like that, and I just, you know, talked about his general welfare. And I really don't know why all of a sudden downhill climbing and nobody can help this thing and that thing. And when it's all is a fact, it's a fact that Darrell is here. It's a fact he visits me and then all of a sudden it's just nothing.

MR. SKINNER: That is all I have.

THE COURT: Cross-examination?

* * * * * *

CROSS-EXAMINATION

BY MR. JONES:

Q Going back to the period when Darrell was in Savannah, what periods of time?

A From one year and one month, that is when his mother went to New York and left him. Then that following June or July, I don't know whether she came and got him or her mother. I just don't know. All I know, he was gone. And stayed up there maybe two or three weeks. I really don't know. If I had known all of this was coming up I'd have receipts where I gave money. I would have milk bills. But back there then who would have known—

Q Tell us briefly once again what you provided for Darrell?

A Everything, everything he needed.

Q You are saying you provided food?

A Food, clothing, everything.

Q Did you provide all the food Darrell had advantage of?

A I can't specifically say whether he ate a peanut butter sandwich from the peanut butter I bought. But I did provide some things for him.

Q Did you provide food other than milk?

A Not food, I will provide money. I'm just assuming that the money I gave went for food.

Q So, you are saying you gave Ms. Smith some money on a regular basis?

A Right. I don't even remember prices, I mean amounts. It was just, basically he never really wanted for nothing. And it wasn't from, Ms. Smith providing because Ms. Smith was overloaded herself, you see.

Q Could it come from Ms. Walcott?
A No.
Q Do you know for a fact that she did not provide payments for him?
A I couldn't say that she didn't send her mother her money. But I can say that she didn't have to send her mother no money to take care of Darrell.
Q Are you saying that you provided sufficient money to Ms. Smith to completely support Darrell?
A Yes, food, clothes.
Q Food other than milk?
A Yes. Wait, I didn't pick up a pound of weiners and carry them over there. And money, if I give you some money, I'm assuming you are going to spend it on the child. I am not going to dictate, say get a loaf of bread or pound of butter.
Q I'm trying to find out what you provided for Darrell during that period.
A Monies, clothes, milk, money, medical expenses, we had a slide out there. He likes to go down the slide. He was born provided for.
Q Did you actually take clothes over there?
A I got a picture in my pocket just came from shopping.
Q I'm talking about during this period, would you say you completely clothed Darrell?
A Right.
Q You provided everything he wore?
A Right.
Q On the shelter aspect, did you put a roof over his head?
A Sixty percent of the time.
Q Sixty percent of the time you provided the shelter for him?
A Right, either he was at her mother's or my mother's or he was with me. And I would carry him literally everywhere I went, no matter day or night or morning or noon, you know what it was.
Q Do you feel that this was good for the child keeping such irregular hours?
A I didn't think about it being bad for him because it was just our way of life. And I wanted to be with him and I had to work. So, it wasn't a matter of whether the surroundings I was with, because I was

brought up in rough surroundings. I didn't come up and turn out to be a bad kid. I may be rough but no criminal. But really the surroundings had nothing to do with it. I was in the whiskey business. Like I say, inside this nightclub we provided a nursery for him that was shut off from the noise and everything. If he wanted to go to sleep at seven o'clock at night he could go to sleep and sleep right through. If he wasn't awake by the time to close, then he and I both would spend the night in there.
Q So, you provided the actual shelter for him about sixty percent of the time?
A Right.
Q Didn't you make some statements your mother was not home?
A No, at certain times of the year. The difference between Ms. Smith and my mother, Ms. Smith would be home say. I can't remember ten times she wasn't at home. My mother is a housewife, but maybe around election time, little organization get organized voters and stuff like that. And how often would election come up, every two years or something like that. But she was sort of active in the community. Not just providing for Darrell, but she would provide for a lot of people in the community.
Q How was your mother's health in this period?
A Fine so far as I know except for the last couple of years she's had arthritis bother her.
Q You would disagree with the statement made by Ms. Smith that your mother was not able to care for a small child?
A Right.
Q So, you felt sixty percent of the time you were providing adequate environment for Darrell?
A Right, adequate roof. We may have a difference to the surroundings. But he was brought up in the nightclub surrounding.
Q Did you make the payments, the cash payments I'm talking about to Ms. Smith on a regular basis?
A No. It wasn't regular, because what he needed I provided everything for him. The little money put there maybe fifteen dollars. I don't know. But fifteen dollars, ten years ago, was fifty now, you know what I mean. And I couldn't say well, every week I

gave her fifteen dollars. No. But that was supposed to have been money to buy, you know, whatever maybe he would need when he was out there.

Q Were you aware of your obligation to support Darrell completely?

A That is what I was doing. Like I said, doing until he disappeared. I spent half of my time looking for him. And we wouldn't be here. I asked her, I said let's don't get into a big long drawn-out thing. All I want to do see the kid and provide for him and that is it. She said every time you come to visit me I'm evidently bad influence on him, and it's bad influence providing for him, then I'm—

Q Let me refer to this trip to New York that has been mentioned previously. I think you heard Ms. Walcott make the statement that part of the reason or part of her feelings during this period were caused by the fact that she was in fear. Do you remember her making that statement?

A Yes.

Q Do you think she had any reason to be in fear of you?

A Yes. Like I say, I was rough. I wasn't no criminal. We would have our little fights, stuff like that. But, eight million people in New York. How could I just find her out of eight million. Must have been some collateral.

Q After that contact was made, possibility she was coerced into giving Darrell to you?

A No.

Q If she was in fear this might be part of the reason.

A If she was.

Q I thought you just said good reason.

A No. I said we have had our times, and fights, no doubt about that. If she had been afraid of me then she should be afraid of me now.

Q Hadn't Ms. Walcott been present when you had an altercation with some other woman?

A Yes.

Q Didn't the other woman get hurt pretty bad in this incident?

A Yes, not pretty bad. Bust a lip. That is not bad I don't think. If you look at it from being hurt, broke arm, that is bad. I am trying to get on the same

level as to what you call pretty bad.

Q But to sort of sum it all up, do you agree that Ms. Walcott had adequate reason to be in fear of you?

A Not really because, the reason of my even having this with this third party was she was, I guess more or less trying to interfere with the relationship as far as the kid and Ms. Walcott and myself. You see, Ms. Walcott haven't had nothing in common since the day the baby was conceived until this one. It wasn't a matter I wanted to get along as sweetheart. I wanted to get along as far as baby. When third party came around, naturally that's got to cause the trouble. So that is when the altercation came about. I'm trying to get her away, not say I'm going to jump on somebody without being provoked, or something.

Q Mr. Quilloin, you are not asking for custody, are you?

A No. I honestly believe his rightful place is with his mother. I was brought up without a father. I know it was times maybe if I had a father, you know, I went on and finished school. I wanted to be a lawyer, you see. And I didn't have no one there to say really encourage me. I'm not married, so consequently with me, he's in a broken home more or less. I don't have no objection to her keeping him. It's just a matter of, it's a little bond between the kid and myself seldom as it's been. And I think where the resentment come from is maybe on their part when I do get him I shower him with too much of everything and he'd go back and talk about it.

Q You do agree he's in a satisfactory home?

A No, that would be an assumption. I'm assuming.

Q But you are not objecting to the home environment at this time?

A As far as I know. I don't know what the surroundings is. I have heard. You tell me I can't go in that.

Q When did you find out Mr. Walcott attempting to adopt Darrell?

A When the lady from the Family and Children's Services called me and set up an appointment. And I was really upset at the time, because just out of the clear blue sky—Mr. Quilloin, my name is so-and-so and I want to explain to you what an adoption is. I

said I understand what adoption is. But she insists have to go from the beginning and what it amounts to.

Q Have you consulted with Mr. Skinner or any other attorney prior to that time concerning visitation rights?

A I spoke with Mr. Skinner. I had occasion to be in his company and I think I asked him, I said well, look, I don't really think I have the money to retain a lawyer. But I said I'm going to have a little problem maybe with my kid.

Q But this was after the time you had found out?

A No, no, this was prior to. I said I think that I am going to, you know, see, I want you to check and see about my rights because Ms. Walcott informed me I didn't have no rights. So then I wanted to check it out. So then on this particular occasion one of the partners out there in the business I am in, just a small partner, he obtained Mr. Skinner. That is how I happened to know him. When Mr. Skinner came out to our place of business after finishing what they had to do, I said what about a little free information. That is when he said I don't think by this law and that law and then it just sort of died off until Ms., I can't think of the lady's name from the Family and Children's Services came out, you know, called me and made an appointment and came out and discussed the kid; what I thought about it, whether or not I was going to appeal it et cetera.

Q Had you made any effort prior to this time, during the eleven years of Darrell's life to legitimate him?

A Number one, that was the first thing. I didn't know that was process even you went through.

Q Were you aware you would go to a court and get some visitation rights?

A I didn't feel like it was necessary. After eight and a half years everything was honky dorry. You see, I wanted to get as much done with less amount of static as possible. Once you throw it in court, the court says this and that. And we was coming right along like I say up through last summer. And then just—

MR. JONES: That is all I have.

THE COURT: Let's take a break.

(Recess.)

* * * * * *

REDIRECT EXAMINATION

BY MR. SKINNER:

Q Mr. Quilloin, were you ever served with the adoption?

A Never.

Q Sheriff ever come out and give you the papers?

A Never.

Q Serve you with anything?

A Never.

MR. SKINNER: That is all I have, Your Honor.

MR. JONES: Nothing further.

THE COURT: Call your next witness.

* * * * * *

MABEL DAWSON

having first been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. SKINNER:

Q Ms. Dawson, would you state your name and address.

A Mabel Dawson, 608 West 59th Street, Savannah, Georgia.

Q How are you related to Mr. Leon Webster Quilloin here?

A That is my son.

Q Okay. Are you familiar with Darrell Quilloin?

A Yes.

Q You know Darrell Quilloin is the son of Mr. Leon Quilloin?

A That's right.

Q And his mother Ms. Walcott?

A That is true.

Q Okay. Ms. Dawson, do you recall when Darrell was born?

A Yes. I don't know the exact year but I do know he was born December 25.

Q From the time that Darrell was born until the time he was about a year old, where did Darrell live?

A With his mother's mother.

Q And from the time that Darrell was about a year old until Darrell was about five and a half, where did Darrell live?
A Well, sometimes he was with Willie Mae and sometimes, well, he was a few months in the north with his mother and back and forth. Sometimes he was with us.
Q Okay. Did doctor, when you say us, you mean—
A I mean to tell the truth may I say this?
Q Sure.
A On both sides the family has always been agreeable, you know. We decided on what we do, the grandmother, when she is going to keep him or want him back. She'd call me and I would carry him to her.
Q You shared the possession of the child and cared for the child?
A Yes, sir, at times.
Q When the child was with you, who provided for the child as far as support?
A Well, my son has always given me and baby and Willie Mae and all who's concerned if you want to know the truth.
Q Given you what?
A Money and supplies for the baby. Different things that Willie Mae would call and just tell him if I didn't tell him and I would go and carry it myself. And Ms. Willie Mae and Ms. Walcott all knowed we loved him and do everything we could allowed to do for him.
Q This past summer, did Darrell visit in Savannah with you?
A For one or two days because he had some aunt there. And he had been over there one or two days and back over and forth like that. I think that is the time he went to birthday party in Milledgeville or something, you know, somewhere in Milledgeville.
Q Could you tell the Court approximately what percentage of the time that you and Mr. Quilloin cared for the child?
A Well, we didn't ever, you know, just have it just Mr. Quilloin and myself other than just a week or so at a time. But, just from Ms. Smith, I myself, Willie Mae and myself, we would have it, Leon would have the little boy. I don't know, I guess, I don't know

how many years really and truly to tell you the truth. But we all have always been with the boy on both sides.
Q Does Darrell recognize you as his grandmother?
A Oh, yes, indeed.
Q How is your health, Ms. Dawson? How was it say five years ago?
A It was okay five years ago but right now it's not, I got a little touch of diabetes. But you see, that doesn't have anything to do with me taking care of Darrell because my husband is retired and he do most of it, you know, working around. We do it together. But I have never been a sickly woman. I have always worked and provided to the best of my ability all of my life until here just about a couple of years now that I have had a little touch of this diabetes.

MR. SKINNER: That is all I have of this witness.

* * * * * *

CROSS-EXAMINATION

BY MR. JONES:
Q On the health question, while we are on it, Ms. Dawson, during this period say when Darrell was one to about five and a half years old, did you have any serious problems with your eyesight?
A Oh, no.
Q Did you have any serious problems with your legs as far as moving about?
A Oh, no, that just came in my older days.
Q So, you're saying that during that period you were fully able to care for Darrell?
A Sure. Anyone, any of them in here, I say that because I have always, Ardell, they all know that I was very active. I got one of my grandchildren to my house now for the summer.
Q Did I understand you to say that you and Mr. Quilloin never really had Darrell actually in your home more than a week at a time?
A No, Darrell went to St. Mary's Catholic School from my house.
Q Where did he return after school?

A You know, he'd go back to Willie Mae's whenever he wanted to. But he wasn't even six then. He would go to kindergarten at St. Mary's.
Q And he would come home every night?
A No, no, go get him, go get him.
Q I mean return every night?
A Oh, yes.
Q And except as you say, except for about a week at a time, he would be going back?
A No, he couldn't go from there a week at a time. We could carry him on the weekends to Willie Mae's, over there on Division and Wright Street. I can get that record.
Q Let me try to ask question I think been asked before. What percentage of the time during this period from the time that Darrell was born until he was five and a half, what percentage of the time did you say that Darrell actually slept in your home or somewhere else with Mr. Quilloin, could you estimate that for us?
A With Mr. Quilloin or with both?
Q Either of you.
A Just the family as whole?
Q Right.
A Well, I'd say about forty percent because Willie Mae has mostly been over off and on. And when I kept him at school I'd carry him home Friday afternoon, Leon or myself, some of us.
Q And I think you said at certain times Ms. Smith would call and request certain items?
A Say I want to go to church and we would take him early Friday where we could go.
Q I was thinking more or less things of money for support, food, shelter.
A Oh, no, that was never a problem with any of us. Darrell has always been well kept, well cared for.
Q I thought I understood you to say that at various times when Darrell was staying with Ms. Smith, she would call and request certain items.
A I didn't say items, I said times.
Q Okay, I'm sorry.
A Yes, we do that sometimes.
Q I was about to ask you, let me rephrase that question and put it in these terms. Do you, from your

own personal knowledge, know what Mr. Quilloin provided for Darrell during that time?
A Well, I know that he would provide, they had him on some kind of milk, the doctor put him on something called Similac. It comes in a bottle like that, blue cans. They didn't have that when I had my children small. And she would tell, well, he would be out of Similac, something like that, and never was a problem about him being cared for financially or getting clothing. Never, and it isn't now so far as I know.
Q Well, back during this period, other than the milk, Similac as you say, do you know from your own personal knowledge of things that Mr. Quilloin provided for Darrell?
A Well, clothing and like that.
Q I'm sorry.
A He'd mind him sometimes, care for him and like what you mean, like clothing?
Q Yes, necessities of life.
A Oh, no, Leon always did that. Or both would contribute not necessarily that he had to do so.
Q I'm particularly concerned with what Mr. Quilloin provided, Similac, and you mentioned clothes.
A He got them up until just here this year when we were expecting him to come in March and he didn't get there. We always get, you know, his clothes for him and all like that.
Q Did Mr. Quilloin provide all the clothes that Darrell had?
A I wouldn't say all because all mothers buy little things for the children. But anything that Darrell really needed he got that.
Q Would you say that Mr. Quilloin provided the majority?
A The majority, yes.
Q Do you know of your own knowledge of any money that Mr. Quilloin ever gave to Ms. Smith during this period?
A Yes, any, you know that was between the two of them. But she's never complained to me about him not doing.

MR. JONES: That is all I have, Your Honor.
THE COURT: Anything else?

MR. SKINNER: I don't think so.
THE COURT: Please go back outside.

* * * * * *

ROBERT WILSON MOSS

having first been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. SKINNER:

Q State your name for the Court and jury.
A Robert Wilson Moss.
Q Where do you live?
A Savannah, Georgia.
Q How long have you been acquainted with Mr. Leon Webster Quilloin sitting here?
A I met him in, I think maybe April of '65.
Q Okay. Did you know his son Darrell Quilloin?
A Yes.
Q Tell the Court how you first met Darrell Quilloin?
A Well, I came to Savannah in the Air Force, stationed at Hunter Field. And I got acquainted with Mr. Quilloin. He was club owner at the time. And we became pretty good friends. And he had this kid which I didn't know too much about, seen him. But the way that I came more acquainted with him, I went with Mr. Quilloin to New York in September of '66 is when I got discharged from service, with him to pick up his kid. And from that time I have, you know, seen the kid on several occasions with his father.
Q Do you know whether or not Mr. Quilloin cared for Darrell during this time?
A I know that he cared for him, yes.
Q What makes you know that?
A Well, he was very concerned about him. He was always wanted him around him. He would get his kid and as a matter of fact, he took the kid most every place he went, you know, when he had him. Like I said, we were good friends and you know, a lot of times he wou'd, he would just keep his kid. Every place we saw him, he had his kid with him.

Q Are you related to Mr. Quilloin in any manner?
A No, I am not.
MR. SKINNER: That is all I have.
MR. JONES: No questions.
THE COURT: All right, sir.

* * * * * *

DONNELL DAWSON

having first been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. SKINNER:

Q State your name.
A Donnell Dawson.
Q Are you related to Mr. Leon Quilloin here?
A Yes, I am.
Q And you know Mr. Robert Moss and Ms. Dawson, all came from Savannah today, didn't you?
A Yes, we did.
Q Mr. Dawson, do you know Darrell Quilloin?
A Yes, I do.
Q How long have you known Darrell Quilloin?
A His whole life.
Q Would you just tell the Court for the first five and a half years of Darrell's life approximately what percentage did he spend with Mr. Quilloin?
A It was like, I couldn't really put a percentage. It was just like we had him and her mother had him, you know, it was like, it's rough to say but you know, we always had connections with him.
Q What's Darrell's nickname?
A Sloopy.
Q Were you living with Mabel Dawson during the first five and a half years of Darrell's life?
A Yes.
Q All right. Since then, have you seen Darrell with Mr. Quilloin and have you known that they were visiting together and been together?
A Since when?
Q Since the child was about five and a half.
A Yes.

Q Darrell called Mr. Quilloin daddy, father?
A He called him Leon, and then when he was around me and my mother and father, he called him his daddy, Leon, whatever.

MR. SKINNER: That is all I have.

MR. JONES: No questions.

THE COURT: All right, sir, call your next witness.

MR. SKINNER: I don't have any further witnesses, Your Honor. I'd like to tender these exhibits. Your Honor, I tender P-1 and 2 collectively P-2. Do you have objection?

MR. JONES: I have no objection.

THE COURT: All right, Plaintiff's Exhibits 1 and 2 are received in evidence without objection.

MR. SKINNER: Your Honor, would, I request that I be allowed to question the child. I would prefer both Mr. and Ms. Walcott all be out of here. Just Mr. Jones and Your Honor be in the presence. I think it would put an undue strain on the child to have to testify under these circumstances.

THE COURT: Mr. Jones says he agrees.

MR. JONES: I'm in total agreement.

MR. SKINNER: You want to let them set out. Do you object?

MS. WALCOTT: No.

MR. JONES: What I was consenting to the fact that they should leave. I would really prefer to interrogate Darrell myself.

THE COURT: How old are you?

DARRELL QUILLOIN: Eleven.

THE COURT: You know what it means to take an oath and swear to tell the truth?

DARRELL QUILLOIN: Yes.

THE COURT: I think he understands.

* * * * * *

DARRELL QUILLOIN

having first been duly sworn as a witness testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please.
A Darrell Quilloin.
Q Darrell, do you have some understanding about what we are doing here?
A Yes.
Q Do you realize that the issue before the Court here is whether you will be adopted by Mr. Walcott or whether Mr. Quilloin will continue to be your legal father?
A Yes.
Q Do you understand the Court will make that determination based on what you say and the other evidence that's been presented?
A Yes.
Q How do you feel about this adoption or this request for adoption?
A I want my name changed.
Q You want to get your named changed from Quilloin to Walcott?
A Yes.
Q Can we assume that you want the man that you live with to be your legal father?
A Yes.

MR. JONES: That is all I have.

* * * * * *

CROSS-EXAMINATION

BY MR. SKINNER:

Q Darrell, do you know who your real father is?
A Yes.
Q Who is that?
A You mean now?
Q Who is your real father?
A You mean my legal father?
Q Just forget legal and things like that. I wouldn't expect you to know. Who is the person that you knew as your father from the time you were a baby if you can remember back that far?
A Leon.
Q Leon. Tell me some of the things you and Mr. Leon

Quilloin have done together?
A Well, last year I went, I stayed for two weeks. He used to have a place down there in Savannah. I used to work there. He would pay me every week.
Q He would pay you to work with him?
A Uh huh.
Q And you spent the time there and you worked in the store?
A Yes.
Q Did he buy you clothes and things?
A Yes.
Q Buy you bicycles and things like that?
A One.
Q One time. And last summer, when you were down there, who did you stay with?
A I stayed with Leon for a little while and then the rest of it I stayed with my aunt.
Q Who is that?
A Barbara Richardson. That is where my mother is with them too.
Q Do you recognize Ms. Mabel Dawson as your grandmother?
A Uh huh.
Q You used to call her grandmother?
A Uh huh.
Q Do you remember back when you was a child going around to places, being at places with Mr. Leon Quilloin?
A Yes.
Q Darrell, would you like, if it was left up to you, would you like to see Mr. Quilloin sometimes?
A Yes.
Q You would like to see him?
A Uh huh.
Q Would you like to visit with him sometimes maybe in the summer or something like you have in the past? Have you and Mr. Quilloin talked about whether or not you are going to go on to college, anything like that?
A No.
Q What do you all talk about?
A I don't remember. We just talk sometimes.
Q How do you get along with Mr. Walcott?
A I get along fine.

Q You don't have any problems?
A No.
Q You have any problems with your smaller brother?
A No.
Q Darrell, if Mr. Quilloin wanted to give you something, you wouldn't have any objection to taking it, would you?
A No.
Q Darrell, would you just tell me in your own words what you understand this procedure to be today?
A To get adopted. Get my name changed and get adopted.
Q Do you understand that in the event that the Court were to approve the adoption that you might never be able to see Mr. Quilloin again?

MR. JONES: Your Honor, I really don't want to object. I think it's really improper question.

THE COURT: I think so. It's really intimidating.

MR. SKINNER: That is all, Your Honor.

THE COURT: You want to go back outside? Anything else?

MR. SKINNER: Nothing further, Your Honor.

THE COURT: You all want to argue the case. You all want to argue in any order or does it matter?

MR. SKINNER: I don't think it matters.

MR. JONES: I waive opening and reserve the right to close.

MR. SKINNER: Okay, Your Honor.

* * * * * *

(Argument of Counsel)

THE COURT: Suppose both of you just give me a memorandum and then I will find conclusion of law just as quickly as I can. As quickly as you all get it to me.

* * *

EXHIBITS

Plaintiff:

1. Bill of Dr. H.M. Collier, 1-22-65.
2. 12 colored photographs of Darrell.

(COURT REPORTER'S CERTIFICATE OMITTED IN PRINTING.)

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: APPLICATION OF
RANDALL WALCOTT FOR ADOPTION OF CHILD — ADOPTION CASE NUMBER 8466

LEON WEBSTER QUILLOIN,
Plaintiff
vs.
ARDELL WILLIAMS WALCOTT,
Defendant,
Respondent
— CIVIL ACTION NO. C-18672

LEON WEBSTER QUILLOIN,
Plaintiff
vs.
ARDELL WILLIAMS WALCOTT,
Defendant,
Respondent
— CIVIL ACTION NO. C-18673

ORDER—filed July 12, 1976

The above-stated adoption matter coming on regularly to be heard; and a Petition for Legitimation of said child, a Habeas Corpus action for visitation rights and two amendments thereto attacking the constitutionality of certain Georgia laws and seeking a declaratory judgment and injunction, all having been filed subsequent to the filing of the original petition for adoption; and the Court hearing all the said matters on a consolidated record for the purpose of allowing the biological father (respondent in the adoption matter and movant in the other said matters) a right to be heard with respect to any issue or other thing upon which he desired to be heard, including his fitness as a parent; and, after hearing all the evidence and arguments of counsel, together with consideration of briefs filed in all said matters, the Court finds as follows:

(1) Darrell W. Quilloin, a male, minor child, born December 25, 1964, now eleven (11) years of age; is an illegitimate child of Ardell Williams Walcott (mother) and Leon Webster Quilloin (father). The said mother and father are not and never have been married.

(2) The mother has had possession and custody of said child and the child has lived solely or principally with the mother or maternal grandparents all of the child's life, although the child has visited with the father and the paternal grandparents on many occasions.

(3) The father has provided support for the child irregularly, in the form of medical attention, food, clothing, gifts and toys from time to time.

(4) The principal or primary source of support, on a regular basis, has been the mother or the maternal grandparents.

(5) Overall, the child has been well cared for and has never been in an abandoned or deprived condition.

(6) The mother is now married to Randall Walcott and has been so married since September 16, 1967, and there is a seven-year old child as a result of that marriage.

(7) The mother has recently declined to allow visitation by the father and has declined to accept support by way of toys, gifts, etc., for the child because of disruption of the family and disparity in the treatment of this child and the seven-year old half-brother in the home, which causes problems within the family.

(8) The step-father of the child, Randall Walcott (the mother's husband), filed his petition for adoption of the child on March 24, 1976, and the mother consented to such adoption in writing, same being attached to said petition.

(9) The child, though only eleven years of age, expresses his desire to be adopted by the step-father, Randall Walcott, to change his name to Walcott, as well as his desire to continue to visit the biological father, Leon Webster Quilloin, on occasions.

(10) The biological father made no effort to legitimate the child and filed no petition for legitimation until after the aforesaid petition for adoption was filed by Randall Walcott.

(11) The biological father made no effort to obtain regular visitation rights and filed no Habeas Corpus action to establish visitation privileges until after the aforesaid petition for adoption was filed by Randall Walcott.

(12) The biological father is a single man; he is not seeking custody of the child; he objects to the adoption

by Randall Walcott and he seeks visitation rights.

(13) The mother objects to the granting of the legitimation and she objects to visitation rights by the biological father.

(14) The proposed adoptive father, Randall Walcott, is a fit and proper person to adopt the child.

(15) The proposed adoption of the child by Randall Walcott is in the best interests of said child.

(16) The proposed legitimation of the child by Leon Webster Quilloin is not in the best interests of the child at this late date, nor is the granting of the Habeas Corpus relief seeking visitation rights in the best interests of the child, and both should be denied.

CONCLUSIONS OF LAW

(1) The child in question, being illegitimate, the consent of the mother alone to the adoption is sufficient. (Georgia Laws 1941, as amended, Georgia Code 74-403(3)).

(2) The biological father, Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the paternal power. (Georgia Code 74–203).

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED as follows:

(1) That the final order of adoption be entered on the petition of Randall Walcott, and the Court will enter such order in Case Number 8466 contemporaneously herewith.

(2) That the petition for legitimation filed by Leon Webster Quilloin, Case Number C-18673, be and the same hereby is denied.

(3) That the Writ of Habeas Corpus establishing visitation rights filed by Leon Webster Quilloin, Case Number C–18672, be and the same hereby is denied.

(4) That the first amendment filed by Leon Webster Quilloin, to Case Numbers C–18672, C–18673, and 8644, attacking the constitutionality of Georgia Code Section 74–203 (3028) as amended; Georgia Laws 1943, page 538, as amended; and Georgia Laws 1856 as amended, be and the same hereby is denied and the Court declines to hold

said laws and said Code Section unconstitutional for any of the reasons stated.

(5) That the second amendment filed by Leon Webster Quilloin in Case Numbers C–18672, C–18673, and 8466, seeking a declaratory judgment declaring Georgia Code Section 74–203 (3028) to be unconstitutional, be and the same hereby is denied and the Court declines to declare said Code Sections and any portions thereof and said laws unconstitutional for any of the reasons stated.

(6) That the injunction sought against Randall Walcott and Ardell Williams Walcott in the second amendment filed by Leon Webster Quilloin to the aforesaid actions be and the same hereby is denied, there being no basis in law for the granting of such injunction, and the Court so holds.

This 12 day of July 1976.

S/ _____
JUDGE, SUPERIOR COURT
Atlanta Judicial Circuit

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	ADOPTION CASE NUMBER 8466
LEON WEBSTER QUILLOIN, *Plaintiff* V. ARDELL WILLIAMS WALCOTT, *Defendant, Respondent*	CIVIL ACTION NO. C–18672
LEON WEBSTER QUILLOIN, *Plaintiff* V. ARDELL WILLIAMS WALCOTT, *Defendant, Respondent*	CIVIL ACTION NO. C–18673

AMENDED ORDER—filed July 21, 1976

The Order passed in the above-stated case on July 12, 1976 is hereby amended by striking paragraph five of said Order and inserting in lieu of the said stricken paragraph the following:

> "(5) That the second amendment filed by Leon Webster Quilloin to Case Numbers C–18672, C–18673, and 8466, seeking a declaratory judgment declaring Georgia Code Section 74–203 (3028) and Georgia Code Section 74–403(3), Georgia Laws 1941, page 301, as amended, to be unconstitutional, be and the same hereby is denied, and the Court declines to declare said Code Sections and any portions thereof and said laws unconstitutional for any of the reasons stated."

The remaining portions of said Order, including any findings of facts and conclusions of law, are continued in

full force and effect.
This 21 day of July, 1976.

S/ _____
JUDGE, S.C., A.J.C.

IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	ADOPTION CASE NO. 8466
LEON WEBSTER QUILLOIN, *Plaintiff, vs.* ARDELL WILLIAMS WALCOTT, *Defendant, Respondent.*	CIVIL ACTION FILE NO. C–18672
LEON WEBSTER QUILLOIN, *Plaintiff, vs.* ARDELL WILLIAMS WALCOTT, *Defendant, Respondent.*	CIVIL ACTION FILE NO. C–18673

NOTICE OF APPEAL—filed July 21, 1976

Notice is hereby given that Leon Webster Quilloin, Plaintiff in the action for Legitimation and Habeas Corpus and Respondent in the adoption action hereby appeals to the Supreme Court for the State of Georgia from the Order of the Honorable Elmo Holt, Judge, Superior Court of Fulton County, Atlanta Judicial Circuit, entered on July 12, 1976 wherein said trial court entered a final order of adoption in case no. 8466, and wherein said trial court denied Petitioner's Petition for Legitimation filed in Case No. C–18673, and wherein said trial court denied Leon Webster Quilloin's Applica-

tion for Writ of Habeas Corpus, Case No. C–18672. and wherein the trial court declined to hold Georgia Code Ann. §74–203(3028) as amended, Georgia Laws, 1943, page 538, as amended unconstitutional, and wherein the trial court declined to hold unconstitutional Georgia Code §74–403(3), Georgia Laws 1941, page 300, as amended, and wherein the trial court denied the prayer of injunction of Leon Webster Quilloin.

That the Clerk shall omit nothing from the record except briefs and suggested orders.

That the Supreme Court for the State of Georgia, not the Court of Appeals, has jurisdiction of this Appeal pursuant to Georgia Code Ann. §2–3704 in that this action involves the construction of the Constitution of the United States, equitable relief, and a Habeas Corpus action.

Notive given this 20 day of July, 1976.

S/ _____
WILLIAM L. SKINNER
Attorney for Leon Webster Quilloin

Suite 485
One West Court Square
Decatur, Georgia 30030
(404) 377-0466

**IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA**

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	ADOPTION CASE NUMBER 8466
LEON WEBSTER QUILLOIN, *Plaintiff*, *vs.* ARDELL WILLIAMS WALCOTT, *Defendant*, *Respondent.*	CIVIL ACTION FILE NO. C–18672
LEON WEBSTER QUILLOIN, *Plaintiff*, *vs.* ARDELL WILLIAMS WALCOTT, *Defendant*, *Respondent.*	CIVIL ACTION FILE NO. C–18673

AMENDMENT TO NOTICE OF APPEAL
—Filed July 26, 1976

COMES NOW Leon Webster Quilloin and gives notice that he hereby amends his previous notice of appeal to include the following statement:

That notice is hereby given that Leon Webster Quilloin appeals from the Order of the Honorable Elmo Holt, Judge, Superior Court of Fulton County to the Supreme Court for the State of Georgia from the Order entered by said Judge on July 12, 1976, as amended by the Court's Order of the 21st day of July, 1976.

That the Clerk shall also include the transcript of the evidence taken before the Honorable Elmo Holt in this action.

Notice given as amended this 23 day of July 1976.

S/ _____
WILLIAM L. SKINNER
Attorney for Leon Webster Quilloin

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One West Court Square
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(404) 377-0466

**IN THE SUPREME COURT
FOR THE STATE OF GEORGIA**

LEON WEBSTER QUILLOIN,
Appellant,
vs.
ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT,
Appellees.

SUPREME COURT
CASE NO. 31643

ENUMERATION OF ERRORS—filed Sept. 14, 1976

COMES NOW the Appellant and files this his Enumeration of Errors and respectfully shows to the Court the following:

1.

That the trial court, the Honorable Elmo Holt, Judge of the Superior Court of Fulton County erred in entering his order on July 12, 1976 and amending his order on the 21st day of July, 1976, wherein said trial court entered a final order of adoption in Case No. 8466 and wherein said trial court denied Petitioner's Petition for Legitimation filed in Case No. C–18673 and wherein said trial court denied Appellant's Application for Writ of Habeas Corpus in Case No. C–18672, and wherein the trial court applied and declined to hold Georgia Laws, 1943, page 538, as amended, Ga. Code §74–203, Ga. Code (3028), which states:

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

unconstitutional and wherein the trial court applied and declined to hold unconstitutional Georgia Code §74–403(3), Georgia Laws, 1941, page 300, as amended which states:

> "Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice."

The Order of July 12, 1976 is found at R–33 and was amended by Order of July 21, 1976 found at R–38.

JURISDICTIONAL STATEMENT

The Supreme Court for the State of Georgia, not the Court of Appeals for the State of Georgia has jurisdiction of this appeal pursuant to Ga. Code §2–3704 in that this action involves construction of the Constitution of the United States, equitable relief, and a Habeas Corpus action. R–33 and R–38.

Respectfully submitted this 14 day of Sept., 1976.

S/_____
WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

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(404) 377-0466

IN THE SUPREME COURT OF GEORGIA

Decided: Jan. 06, 1977

31643. QUILLOIN v. WALCOTT

HILL, Justice.

The constitutional rights of the natural father of an illegitimate child are presented here for review. After the child's stepfather filed a petition for adoption, the natural father sought to oppose the adoption, to legitimate the child and to gain visitation rights. The trial court refused to declare Code Ann. §74–203, placing all parental power in the mother of an illegitimate, and Code Ann. §74–403 (3), requiring only her consent for such a child's adoption, unconstitutional. The adoption was granted and the legitimation petition and visitation rights were denied. The natural father appeals.

The child, now twelve, was born in 1964. He has lived with his maternal grandmother and his mother all of his life, although he has visited with his father on occasions. The primary support for the child has been from his mother or his maternal grandparents. His father has provided some support and has given some presents from time to time.

In 1967 the stepfather and the mother were married, and on March 24, 1976, he filed his petition to adopt the child. The mother's consent to such adoption was attached to the petition. The natural father made no effort to legitimate the child or to obtain visitation rights until after the stepfather filed the adoption petition.

On appeal the natural father argues that Code Ann. §§74–203 and 74–403(3) are unconstitutional.

We begin by looking at the statutory scheme of Title 74, Parent and Child, in its entirety. Sections 74–101 through 74–112 are concerned with legitimate children—what children are legitimate, how illegitimate children can be legitimated, etc. Code Ann. §74–108, entitled "Parental Power" states how a father's parental power shall be lost: ". . . 2. Consenting to the adoption of the child by a third person. 3. Failure of the father to

provide necessaries for his child. . . . 5. Consent to the marriage of the child. . . ." Sections 74–201 through 74–205 deal with illegitimate children. Section 74–203, which is under attack, states the rights of the mother of an illegitimate child: "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal (sic) power." Georgia law provides for two ways by which a child can be legitimated by the father: Under §74–101 by the marriage of the natural father and the mother and the recognition of the child as his, and under §74–103 by a petition for legitimation.

With the classification of the children as legitimate and illegitimate in mind, we turn to §§74–401 through 74–424 involving adoption of children (§74–301 et seq. were repealed in 1973). Section 74–403 concerns the consent to adoption required of parents or guardians. Subsection (1) states that no adoption shall be permitted except with the written consent of the living parents of a child. Subsection (2) provides for an exception where the child has been abandoned or parental custody has been terminated. Subsection (3), which is under attack, provides that "If the child be illegitimate, the consent of the mother alone shall suffice."

The equal protection clause of the Fourteenth Amendment requires that all persons be treated alike under similar circumstances and conditions. It does not, however, prevent classification if the distinction is based on valid state interests. In Labine v. Vincent, 401 U.S. 532 (1971), the United States Supreme Court held that Louisiana's interstate succession laws that bar an illegitimate child from sharing equally with legitimate children are not violative of due process or equal protection. That is to say that a state may make valid classifications of children, of legitimate and illegitimate, if based upon valid state interests.

Georgia has concern for the well-being of all its children. To further the protection and care of its children, Georgia favors and encourages marriage and child rearing in a family relationship. In the case of an illegitimate child, there is no marriage and, most frequently, there is no father to raise the child; instead there is only a mother. It is reasonable for Georgia to

place full responsibility for the illegitimate child on the parent who is present. This placing of full parental power in the mother is consistent with the public policy favoring marriage and the family because the father can choose to join the family, Code Ann. §74–101, or can petition to legitimate the child, §74–103.

In the usual case, if the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the state's interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the state could be required to sever his relationship before the adoption could proceed. In addition, since the father has already shown his lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption. Georgia's interest in seeing to the needs of children is served by the statutory scheme. When the illegitimate child's mother consents to adoption, the state and the mother's interest coincide and the child can be placed with a family.

The state's interest is even stronger under the facts of this case. For eleven years the natural father took no steps to legitimate the child or support him. Yet when the stepfather, married to the child's mother, wishes to adopt the boy and accept responsibility for him, the natural father suddenly opposes legal recognition of this family unit.

We find that neither Code Ann. §74–203 nor §74–403(3) deny the natural father equal protection of the laws.[1]

The natural father contends that the Georgia statutes take away his parental rights without due process of law. He relies on Stanley v. Illinois, 405 U.S. 645 (1971). In Stanley, the Supreme Court held an Illinois statutory scheme unconstitutional which required a hearing and proof of unfitness before the state could assume custody of a child of married or divorced parents or unmarried mothers, yet required no such showing before separating a child from an unwed father. In Stan-

[1] See in re Adoption of Malpica—Orsini, 36 NY2d 568, 370 NYS2d 511, 331 NE2d 486 (1975), appeal dismissed, 96 SC 765 (1976).

ley, the father was a defacto member of the family unit,[2] and the mother had died. Either of these factual differences would be sufficient to distinguish Stanley from the case before us. We find that Stanley is not controlling and that Code Ann. §§74–203 and 74–403 (3) violate neither equal protection nor due process.

Judgement affirmed. All the Justices concur except Undercofler, P.J., and Gunter, J. and Ingram, J., who dissent.

[2] Georgia recognizes common law marriages but Illinois does not.

31643. QUILLOIN v. WALCOTT.

UNDERCOFLER, Presiding Justice, dissenting.

The majority summarily disposes of the due process issue in Stanley v. Illinois, 405 U.S. 645 (1971) on the facts of that case. It then disposes of the equal protection issue on the basis that it is reasonable to treat unwed fathers differently because state public policy favors adoption. The court thus misconstrues Stanley. Stanley holds that an unwed father has due process rights and that he is denied equal protection because all other parents except unwed fathers are entitled to due process. "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness *as a parent* before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." Stanley v. Illinois, supra, p. 649. (Emphasis supplied.)

The majority dismisses the due process right as merely a de facto right, which accrued from the fact that Stanley had intermittently lived with the mother and his children over an eighteen year period.[1] On the contrary, the Supreme Court held that Stanley's due process rights stemmed from the biological fact of paternity.[2] This is made clear in a footnote: "If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, . . . Illinois would admittedly at some later time *have to afford them a properly focused hearing in a custody or adoption proceeding.*" Stanley v. Illinois, supra, p. 675, n. 9. (Emphasis supplied.) The Court even approved notice by publication to "All whom it may Concern," where the father was unknown or had disap-

[1] The children were not then living with the father, but had been left by the father with another couple. Stanley v. Illinois, supra at p. 663, n. 2.

[2] See also Gomez v. Perez, 409 U.S. 535 (1973) (unacknowledged illegitimates have a cause of action against their natural fathers for support); Glona v. American Guarantee Co., 391 U.S. 73, 75–76 (1968).

peared. See footnote 9, supra. Thus the Stanley majority intended to recognize the due process rights of *all* natural fathers, not merely those who live with their families.

The majority, I think, also misconstrues the basis of the equal protection claim in Stanley. I agree with the majority that the State has a rational basis in promoting the legitimation of the children of unwed fathers. Further, I know of no public policy of this State favoring adoption by strangers over being raised by one's own father. The crux of the claim in Stanley, however, is that because an unwed father has due process rights in his children, it is a denial of equal protection to treat him differently than other parents.[3] Thus based on the due process right, which the majority does not accept, the equal protection claim is not so easily dismissed on state public policy grounds. On this distinction, I would hold that Code Ann. §74–403(3) denies unwed fathers due process and the equal protection of the laws as was held by the Supreme Court in Stanley.

This position is fortified by the remand of two cases to their respective state courts in light of Stanley. Rothstein v. Lutheran Social Services, 405 U.S. 1051 (1971), vacating and remanding, State ex rel Lewis v. Lutheran Social Services, 47 Wis2d 420 (178 NW2d 56) (1970); Vanderlaan v. Vanderlaan, 405 U.S. 1051 (1971), vacating and remanding, 126 Ill. App2d 410 (262 NE2d 717) (1970). On remand, the Wisconsin Supreme Court held, in a case similar to this one, that an adoption which had taken place without terminating the rights, or without the consent, of the unwed father was invalid in light of Stanley. The Wisconsin Court said, "The Supreme Court decided two things: (1) that the denial of a natural father's parental rights to a child born out of wedlock based on mere illegitimacy violated his constitutional right to equal protection of the laws, and (2) that the termination of a natural father's parental rights to a child born out of wedlock without actual notice to him, if

[3] " 'To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue for the Equal Protection Clause necessarily limits the authority of a state to draw such 'legal' lines as it chooses.' Glona v. American Guarantee Co., 391 U.S. 73, 75–76 (1968)." Stanley v. Illinois, supra, p. 652.

he was known, or constructive notice, if unknown, and without giving him the right to be heard on the termination of his rights denied him due process of law." State ex rel Lewis v. Lutheran Social Services, 59 Wis2d 1 (207 NW2d 826, 828) (1973). Likewise, the Appellate Court of Illinois on the remand of Vanderlaan v. Vanderlaan, 9 Ill. App3d 260 (292 NE2d 145) (1972), interpreted Stanley as having recognized that unwed fathers have protectable rights in their children. See also Miller v. Miller, 504 F2d 1068 (9th Cir., 1974); Willmot v. Decker, 541 P2d 13 (Ha., 1975); Forestiere v. Doyle, 310 A2d 607 (Conn., 1973); State ex rel Lewis v. Lutheran Social Services, supra; Slawek v. Covenant Children's Home, 284 NE2d 291 (Ill., 1972); Doe v. Dept. of Social Services, 337 NYS2d 102 (1972); In re Harp, 495 P2d 1059 (Wash., 1972); In re Brennan, 134 NW2d 126 (Minn., 1965). But see, In re Adoption of Malpica-Orsini, 36 NY2d 568, 370 NYS2d 511 (331 NE2d 486) (1975), appeal dismissed, 96 SC 765 (1976).

2. I concur with the majority that Code Ann. §74–203 arbitrarily placing the parental power of the illegitimate child in the mother, rather than in the father as for legitimate children, has a rational basis in state policy. It is clear from Labine v. Vincent, 401 U.S. 532 (1971) that the State may make such determinations of family relationships. This section may be distinguished from Code Ann. §74–403 (3) because it does not purport to deprive the other parent of all parental rights.

Because of my position stated in division 1, however, I must dissent.

I am authorized to state that Justice Carter joins this dissent.

IN THE SUPREME COURT OF GEORGIA

LEON WEBSTER QUILLOIN,
Appellant,
vs.
ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT,
Appellees.

SUPREME COURT
CASE NO. 31643

MOTION FOR REHEARING

COMES NOW the Appellant, Leon Webster Quilloin, and pursuant to Rule 32 of this Court, moves for a rehearing by this Court on Appellant's Appeal from the Superior Court of Fulton County that was denied by the majority of this Court on January 6, 1977, thereby affirming the decision of the Superior Court of Fulton County that denied Appellant the relief prayed for therein.

1.

Appellant shows that this Motion is filed within ten (10) days of the decision affirming the ruling of the Superior Court of Fulton County.

2.

This Motion is filed on the grounds that the majority decision of this Court announced January 6, 1977 misconstrued the application of *Stanley vs. Illinois*, 405 U.S. 645 (1971), as not controlling in this case in the face of the fact that *Stanley vs. Illinois* held that a presumption that distinguishes and burdens all unwed fathers was constitutionally repugnant. That the majority decision also misconstrued and overlooked the fact that Stanley had been routinely applied by the United States Supreme Court in *Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1971), vacating and remanding, *State ex rel. Lewis vs. Lutheran Social Services*, 47 Wis.2nd 420, (178 N.W.2nd 56) (1970); *Vanderlaan vs. Vanderlaan*, 405 U.S. 1051, (1971) vacating and remanding; 126 Ill. App.2nd 410 (262 N.E.2nd 717) (1970). In this regard the majority decision of this Court overlooked the fact that on remand, the Wisconsin Supreme Court held, in a case similar to this one, that an adoption which had taken place without terminating the rights, or without the consent, of the unwed father, was invalid in light of Stanley. The Wisconsin Court said, "The Supreme Court decided two things: (1) That the denial of a natural father's parental rights to a child born out of wedlock based on mere illegitimacy violated his constitutional right to equal protection of the laws, and (2) That the termination of a natural father's parental rights to a child born out of wedlock without actual notice to him, if he was known, or constructive notice, if unknown, and without giving him the right to be heard on the termination of his rights denied him due process of law." *State ex rel. Lewis v. Lutheran Social Services*, 59 Wis.2nd 1 (207 N.W.2nd 826, 828) (1973). Likewise, the Appellate Court of Illinois on the remand of *Vanderlaan vs. Vanderlaan*, 9 Ill. App.2nd 260 (292 N.E.2nd 145) (1972), interpreted Stanley as having recognized that unwed fathers have protectable rights in their children. See also *Miller vs. Miller*, 504 F2nd 1068 (9th Cir., 1974); *Willmot vs. Decker*, 541 P2nd 13 (Ha., 1975); *Forestiere vs. Doyle*, 310 A2nd 607 (Conn., 1973); *State ex rel Lewis vs. Lutheran Social Services*, supra; *Slawek vs. Covenant Children's Home*, 284 N.E.2nd 291 (Ill., 1972); *Doe vs. Dept. of Social Services*, 337 NSY2nd 102 (1972); In re Harp, 495 P2nd 1059 (Wash., 1972); In re Brennan, 134 N.W.2nd 126 (Minn., 1965). Also see the dissent In re Adoption of Malpica-Orsini, 36 NY2nd 568, 370 NYS2nd 511 (331 N.E. 2nd 486) (1975), appeal dismissed for lack of sufficient federal question, U.S. 96 SC 765 (1976).

3.

This Motion is filed on the grounds that this Honorable Court has misconstrued Stanley, supra. by dismissing Stanley as not applicable on public policy grounds while this Court should have held that Stanley was applicable, and therefore held as the minority opinion "that Code Ann. §74-403(3), Georgia Laws of 1941, page 300, as amended, that provides:

> "Legitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice. . ."

denies unwed fathers due process and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

4.

That the minority opinion failed to recognize the fact that in Stanley the children were not living with the father, but had been left by the father with another couple. *Stanley vs. Illinois*, supra. at page 663, No. 2.

5.

The Supreme Court held that Stanley's due process rights stemmed from the biological fact of paternity. *Gomez vs. Perez*, 409 U.S. 535 (1973); *Glona vs. American Guarantee Co.*, 391 U.S. 73, 75–76 (1968). This was overlooked by the majority.

6.

That the majority decision of this Court announced January 6, 1977 misconstrued the facts of this case that clearly showed that this child had always been recognized as the child of the Appellant, had always gone by the name of Quilloin, and had never been branded as an illegitimate or bastard by his father as a matter of fact. Therefore, the minor child was de facto legitimate even though the legal procedure of legitimating the child through the Courts was not taken so as to perfect a de jure legitimation according to Georgia law. The Appellant had signed the birth certificate of the child and allowed the child to go under his name all of the child's life, and the Appellant could, by Will, leave said child all of his estate thereby eliminating any legal benefit for the child flowing from the legitimation action under Georgia law. Therefore, it is conceivable in many cases where an unwed father could adequately protect and provide for his minor child without the necessity of Court intervention. On the contrary, the legal father could leave his entire estate to his paramour to the exclusion of his minor or adult children excepting the year's support procedure for this State. It should be noted, however, that the year's support procedure would only apply to minor children while an adequate unrevoked Will would suffice to protect even adult children whether a Court legitimation was accomplished or not. It should be noted here that the majority decision has decided this case based upon the legal definition of legitimacy as opposed to the factual definition of legitimacy in that the Appellant never denied that said child was his and his responsibility.

7.

That this Honorable Court's majority decision announced January 6, 1977 misconstrued the Fourteenth Amendment to the United States Constitution, and failed to apply said Fourteenth Amendment to the United States Constitution to this case by failing to hold Georgia Laws of 1971, page 300, as amended, Ga. Code Ann. §74–403(3) unconstitutional as applied by this Court to this action in that an application of this portion of Georgia Laws of 1941, page 300, as amended, Ga. Code Ann. §74–403(3) to the natural father, Appellant, violated his right to due process of the law and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution in that Appellant was denied plain rights given to other biological parents of minor children in and to said minor children merely because he had never legally contracted a marriage with the biological mother and said child or children, and Appellant was therefore found to not have standing to contest the adoption action and was thereby denied the right to assert his fitness as a parent to have the partial custody of his biological child in the form of visitation rights with said child, all in violation of the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution, and that to classify all unwed fathers as unfit parents as a matter of law amounts to a State created classification not based upon reason generally or in particular as applied in this case.

8.

That this Honorable Court in its decision announced January 6, 1977 overlooked and failed to apply the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution by failing to hold Ga. Code (3028), Ga. Code of 1933, as amended, Georgia Laws 1943, page 348, as amended, Ga. Code Ann. §74–203, which provides:

> "Mother's rights, the mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all parental power."

unconstitutional in that said law of this State is attempting to draft a definition of parent to mean the legal parent, that is the biological mother or the legally married father, or legally divorced father. The equal protection clause of the Fourteenth Amendment necessarily limits the authority of a State, and this State to draw such "legal" lines as it chooses. Therefore, said law is unconstitutional as applied by this court and the trial Court to the Appellant; in that the application of said law to the Appellant violates his rights to the equal protection of the laws, and is therefore, in violation of the Fourteenth Amendment to the United States Constitution in that Appellant is denied the same rights given to natural parents and fathers of minor children merely because he has never married the natural mother, and therefore, the Appellant is denied due process of the law by the ruling of the trial Court holding that he has no standing to object to the adoption by being denied the right to assert his fitness as a parent to have partial custody of said child in the form of visitation privileges or rights with said child, and that the denial of this right is a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

9.

That the decision of this Court decided January 6, 1977 therefore, overlooked *Glona vs. American Guarantee and Liability Insurance Company*, 391 U.S. 73, 75–76, 88 S.Ct. 1515, 1516, 20 L.Ed.2nd 441 (1968) which does not permit states to draw legal lines as it chooses.

10.

That this Honorable Court in its decision decided and announced January 6, 1977 has overlooked the decision of *Levy vs. Louisiana*, 391 U.S. 68, 71–72, 88 S.Ct. 1509, 20 L.Ed. 2nd 436 (1968), which held that a State Statute could not deny natural but illegitimate children a wrongful death action for the death of their mother merely because the child was illegitimate.

11.

That the majority opinion decided and announced January 6, 1977 overlooked and failed to give weight to the unimpeached testimony of the Appellant that he had

loved and cared for said child in the best manner that he could consistent with his circumstances in life shown by the testimony of the Appellant from T-44 to T-57, and in this regard, the majority opinion has failed to give weight to the undisputed fact that the minor child was never abandoned and left without necessities by the biological mother, the maternal and paternal grandmothers and the biological father. T-23, 24, 25. The majority decision is vastly inconsistent in that page 1 of said decision states:

> "His father has provided some support and has given some presents from time to time."

and then the majority opinion stated at page 5, paragraph 2:

> "For eleven years the natural father took no steps to legitimate the child or support him."

Therefore, the majority opinion is itself inconsistent based upon the facts of this case. The majority overlooked the fact that the natural mother admitted that Appellant had provided things of a material nature for the minor child, T-9, such as sending the child to kindergarten for an entire year.

12.

That the majority opinion decided and announced January 6, 1977 has failed to recognize the testimony in this case that indicates that the Appellant is not the stamped mold that society would place upon unwed fathers, and therefore, he should not be burdened by a presumption against him in this particular case drawn merely on legal rather than factual lines.

WHEREFORE, Appellant, Leon Webster Quilloin, prays that this motion for Rehearing be granted and that this Court vacate the majority decision decided and announced January 6, 1977, and substitute in lieu thereof the minority decision decided and announced January 6, 1977, and thereby reverse the ruling of the trial court.

S/ _____
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**IN THE SUPREME COURT
OF THE STATE OF GEORGIA**

LEON WEBSTER QUILLOIN, *Appellant*, *vs.* ARDELL WILLIAMS WALCOTT and RANDALL WALCOTT, *Appellees.*	GEORGIA SUPREME COURT CASE NO. 31643

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES
PURSUANT TO RULE 10—filed Feb. 18, 1977

PART I. (A)

Notice is hereby given that Leon Webster Quilloin, the Appellant above mentioned, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Georgia entered on January 27, 1977 wherein the majority of said court denied Appellant's Motion for Rehearing wherein Justices Undercofler, P.J., Gunter and Ingram, J.J. dissented. That Appellant also appeals to the Supreme Court of the United States from the initial decision in the above-styled case that was decided and entered on January 6, 1977 that affirmed the ruling of the trial court entered on July 12, 1976 and amended on July 21, 1976 in consolidated cases numbered 8466, C–18673 and C–18672 wherein said trial court entered a final order of adoption in Case No. 8466 and wherein said trial court denied Petitioner's Petition for Legitimation filed in Case No. C–18673 and wherein said trial court denied Appellant's Application For Writ of Habeas Corpus in Case No. C–18672, and wherein the trial court applied and declined to hold Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74–203, Ga. Code (3028) unconstitutional, and wherein said trial court applied and declined to hold unconstitutional Ga. Code Ann. §74–403(3), Georgia Laws, 1941, page 300, as amended.

This appeal is taken pursuant to 28 U.S.C. 1257 (2) in that a question involving the validity of a statute of the State of Georgia has been raised on the grounds that

said statutes are repugnant to the Constitution of the United States of America, and the decision of the State Court was in favor of its validity.

PART II. (B)

The Clerk of the Supreme Court of the State of Georgia shall transmit the entire record excepting the Briefs filed by both parties to the Clerk of the United States Supreme Court upon request by the Clerk of the United States Supreme Court or the Justices thereof.

PART III. (C)

The following questions are presented by this appeal:

1. Did the trial court and the majority of the Supreme Court of the State of Georgia err in failing to hold unconstitutional Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74–203, Ga. Code (3028), which states:

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

on the ground that said code section and statute violated the due process and the equal protection clause of the Fourteenth Amendment to the United States Constitution in that said statute creates an irrebutable presumption of unfitness to have partial custody on behalf of all unwed fathers and the Appellant?

2. Did the trial court and the majority of the Supreme Court of the State of Georgia err in failing to hold unconstitutional Ga. Code Ann. §74–403(3), Georgia Laws, 1941, page 300, as amended, which states:

> "Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice". . .

on the grounds that said statute is unconstitutional and repugnant to the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution in that said statute creates the irrebutable presumption of unfitness on behalf of all unwed fathers without regard to their former parental responsibility and therefore, denies Appellant and all unwed fathers

standing to object to the adoption of their natural, biological chidlren?

Respectfully submitted this 17th day Feb., 1977.

S/_____
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Leon Webster Quilloin

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In the Supreme Court of the United States

No. 76-6372

LEON WEBSTER QUILLOIN, *Appellant*,
v.
ARDELL WILLIAMS WALCOTT, *et al.*

ON CONSIDERATION of the motion of the appellant for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

May 31, 1977

In the Supreme Court of the United States

No. 76-6372

LEON WEBSTER QUILLOIN, *Appellant*,
v.
ARDELL WILLIAMS WALCOT, *et al.*

APPEAL from the Supreme Court of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

May 31, 1977

IN THE SUPREME COURT OF THE UNITED STATES

LEON WEBSTER QUILLOIN,

Appellant,

Vs. CASE NO. 76-6372

ARDELL WILLIAMS WALCOTT,
and, RANDALL WALCOTT,

Appellees.

MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF STATUTES

IN THE SUPREME COURT OF THE UNITED STATES

LEON WEBSTER QUILLOIN,
Appellant,
vs.
ARDELL WILLIAMS WALCOTT, and RANDALL WALCOTT,
Appellees.

CASE NO. 76-6372

MOTION TO DISMISS

INTRODUCTION

Appellees in the above-entitled case move the Court to dismiss this appeal on the ground that the Federal question presented is so unsubstantial as not to need further argument.

STATEMENT OF FACTS

The statement of facts contained in Appellant's Brief is incomplete and inacurate because the following important facts were omitted or incorrectly stated:

1. Appellant LEON WEBSTER QUILLOIN, has never supported the child in this case, DARRELL W. QUILLOIN, on a regular basis. R-34, T-9, T-32, T-36, 77.

2. Appellant never attempted to legitimate the minor child or to obtain visitation rights that would allow him to visit the minor child prior to the filing of Appellees' Petition for Adoption in this case. R-35, T-66.

3. It is the wish of the minor child, DARRELL W. QUILLOIN, that he be adopted by Appellee RANDALL WALCOTT. R-35, T-80.

ARGUMENT SUPPORTING THE POSITION THAT THIS APPEAL DOES NOT PRESENT SERIOUS AND SUBSTANTIAL FEDERAL QUESTIONS

Appellant contends that the applicable Georgia statutes in this case as applied to him constitute violations of the due process and equal protection clauses of the Constitution of the United States and that this conclusion is based on the case of Stanley v. Illinois, 405 U.S. 645 (1971). In that case, this Court held that where the natural mother of illegimate children was dead, the biological father of these children was entitled to a hearing before custody of the children could be given to the State. This Court based its decision on the fact that the due process and equal protection clauses required a hearing before the father's children could be taken from him.

Appellees submit that Stanley is inapplicable here because it can be distinguished on a number of very important factual grounds. First, unlike Stanley, the mother in the instant case is alive and is living with the child, along with her husband who is the original petitioner for adoption in this case. Secondly, Stanley involved a contest between the biological father of illegimate children and the State. This case involves a contest between the biological father of an illegimate child and the stepfather with whom he has been living. In the instant case, the child will remain in the normal family environment that he has become accustomed to, whereas in the Stanley situation, the children would be placed in a State institution or a foster home.

Perhaps the most important factual distinction between the instant case and Stanley is that, in Stanley the father, mother, and children had lived together as a family prior to the mother's death. Id at 646. This Court felt that this was an extremely important factor since the father was living with the children at the time of the mother's death. Id, n.4 at 650. This situation is obviously different from the instant case where Appellant has never lived with the minor child on a regular basis.

The most important factor which takes this case out of the Stanley situation is the existence of a Georgia statute by which the father could legitimate his illegitimate minor child. It should be noted at this point that Illinois did not have such a legitimation statute at the time of Stanley. Illinois does have a statute which deals with the legitimation of illegitimate children after the parents have entered into a ceremonial marriage. See Ill. Code Ann. 89 §17(a).

Ga. Code Ann. §74-103 provides for legitimation by petition of the punitive father and reads as follows:

> "A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, setting forth the name, age, and sex of such child, and also the name of the mother; and if he desires the name changed, stating the new name, and praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child to be legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known."

Appellee submits that this statute satisfies whatever due process requirement Appellant has in this case and that this requirement is not violated if the father does not chose to utilize the procedure set sorth in the above code section.

In his brief, Appellant argues that he should not be punished for not taking legal action which was totally unnecessary in the first place. See Appellant's Brief, pg. 13. This argument is untenable since the legal action would have availed Appellant of the very rights that he claims to be deprived of. Appellee submits that the instant case presents the situation where an individual has slept on the rights given him by law, rather than being denied these rights as Appellant contends.

It should be noted at this point that the Georgia legislature has taken steps to prevent any possible unfairness to a putative father in Appellant's position. The new Georgia statute which becomes effective January 1, 1978 provides for notice to the putative father and allows him thirty (30) days after the filing of a petition for adoption to file his petition to legitimate the child involved. Ga. Acts 1977, pg. 201. Appellee submits that this fact makes the question involved in this case more unsubstantial since the problem involved here will not arise again in Georgia after the above referenced statute takes effect.

In this case, it is undisputed that Appellant never attempted to legitimate the minor child prior to the filing of Appellee RANDALL WALCOTT's petition for adoption. Appellant has never attempted to obtain visitation rights to the minor child. T-10, T-66. He should not now be heard to argue that the decision of the Supreme Court of Georgia deprives him of the rights in the minor child when he failed to take the necessary steps to avail himself of these same rights.

Appellant makes the argument that Ga. Code Ann. §74-203 and §74-403 violate the requirements of due process of law and

equal protection because they classify all unwed fathers as unfit parents. However, this is not the case. These laws establish a valid category by separating fathers who have not acknowledged paternity of a minor child from those who have married the child's mother or legitimated the child.

It is obvious that the statutes above mentioned do not violate the due process clause of the United States Constitution. The Federal and State requirements of due process are satisfied if one is given notice and an opportunity for a hearing before he is deprived of life, liberty, or property. However, even the Court in Stanley acknowledged that due process of law does not require a hearing in every concievable impairment of a private interest. Id at 650. See also Cafeteria Restaurant Worker's Union, etc. v. McElroy, 367 U.S. 886 (1967).

Appellee submits that any due process requirement which does exist in this situation is satisfied by the existence of the above mentioned legitimation statute. Appellant argues that the only effective due process in this situation is by objecting in the adoption action. However, Georgia is not under any obligation to satisfy Appellant's asserted right to due process at that stage, and the statutory scheme which requires him to assert his rights prior to that time is permissible.

This Court has held that vindication of constitutional rights under the due process clause does not demand uniformity of procedure by all the States, but each State is free to devise its own way of securing essential justice. Hysler v. Florida, 315 U.S. 411 (1942). This Court has also held that the Fourteenth Amendment does not give Federal Courts the power to impose upon the States their views of a wise economic or social policy.

Dandridge v. Williams, 397 U.S. 471 (1970).

The equal protection clause of the United States Constitution requires that all persons shall be treated alike under like circumstances and conditions. However, it is not a demand that the statute necessary apply equally to all persons and does not require that things which are different in fact to be treated in law as though they were the same; hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. Rinaldi v. Yager, 384 U.S. 305 (1966). Equal protection does not mean that a State may not draw lines to treat one class of individuals or entities different from the others; the test is whether the difference in treatment is invidious duscrimination. Lehnhausen v. Lakeshore Auto Parts, 410 U.S. 356 (1973); Barrett v. Shiparo, 411 U.S. 910 (1973); Carrington v. Rash, 380 U.S. 89 (1966).

The majority decision of the Supreme Court of Georgia in this case expresses the State's legitimate concern in this situation: "Georgia has concern for the well-being of all its children. To further the protection and care of its children, Georgia favors and encourages marriage and child bearing in a family relationship. In the case of an illegitimate child, there is no marriage and, most frequently, there is no father to raise the child; instead there is only a mother. It is reasonable for Georgia to place full responsibility for the illegitimate child of the parent who is present. This placing of full parental power in the mother is consistent with the public policy favoring marriage and the family because the father can chose

to join the family, Code Ann. §74-101, or can petition to legitimate the child. §74-103.

In the usual case, if the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the State's interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the State could be required to sever his relationship before the adoption could proceed. In addition, since the father has already shown his lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption. Georgia's interest in seeing to the needs of children is served by the statutory scheme. When the illegitimate child's mother consents to adoption, the State and the mother's interest coincide and the child can be placed with a family.

The State's interest is even stronger under the facts of this case. For eleven (11) years the natural father took no steps to legitimate the child or support him. Yet when the stepfather, married to the child's mother, wishes to adopt the boy and accept responsibility for him, the natural father suddenly opposes legal recognition of this family unit." See majority opinion, pg. 4, 5.

This Court has held that the equal protection clause requires that, in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purpose for which the classification is made. Rinaldi v. Yager, supra.

The statutory discrimination will not be set aside for violating the equal protection clause if any state of facts reasonably may be conceived to justify it. Dandridge v. Williams, supra. The State's interest expressed in the majority opinion certainly satisfies these requirements.

This Court has, on two occasions, declined to extend the rationale of Stanley. Rothstein v. Lutheran Social Services, 405 U.S. 1051 (1972); In Re Adoption of Malpica- Orsini, 36 N.Y. 2d 568, 370 N.Y.S.2d 511; 331 N.E.2d 486 (1965), appeal dismissed, 96 S.Ct. 765 (1976). The latter case involved an appeal from the New York Court of Appeals which involved a factual situation similar to the one in this case. This Court dismissed that case "for want of a substantial federal question".

CONCLUSION

In conclusion, Appellee submits that the Appellant had adequate opportunity to legitimate the minor child during the eleven years prior to the filing of Appellee RANDALL WALCOTT's petition for adoption. If he did not, he can not now be heard to argue that he has been deprived of his constitutional rights. If Appellant feels that he did not have proper notice in this case, Appellee would submit that he had notice for eleven years that he was the biological father of the minor child.

Appellee would also respectfully remind the Court that a decision in Appellant's favor would have a very unsettling effect on adoptions all over the nation. Many of these stable situations would be unsettled and perhaps destroyed if putative fathers were given veto power over adoptions which are in the best interest of the child. The motive of such a person who has not taken sufficient interest to care for the child must be

examined carefully. In many of these situations, including the instant case, the putative father seems more interested in obstructing an orderly situation rather than contributing to the child's welfare. The possibility of blackmail or other improper activities is also apparent in such a situation.

For the reasons above mentioned, Appellee respectfully requests that the Court dismiss this case for want of a substantial federal question.

Thos F. Jones

THOMAS F. JONES
ATTORNEY FOR APPELLEES

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this Motion to Dismiss on behalf of Appellees, by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon addressed to:

William L Skinner, Esq.
Suite 485
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Decatur, Georgia 30030

&

Arthur K. Bolten, Attorney General
for the State of Georgia by serving
Carol Atha Cosgrove, Staff Assistant
Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This 10th day of May, 1977.

Thos F. Jones
THOMAS F. JONES
Attorney for Appellees

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1976

NO. 76-6372

LEON WEBSTER QUILLOIN,

Appellant,

v.

ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF THE STATE OF GEORGIA IN SUPPORT OF APPELLEE'S MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1976

No. 76-6372

LEON WEBSTER QUILLOIN,]
]
Appellant,]
]
v.]
]
ARDELL WILLIAMS WALCOTT]
and RANDALL WALCOTT,]
]
Appellees.]

BRIEF OF THE STATE OF GEORGIA
IN SUPPORT OF APPELLEE'S
MOTION TO DISMISS

I. INTRODUCTION

COMES NOW Arthur K. Bolton, Attorney General of the State of Georgia, as Amicus Curiae, and hereby submits a brief pursuant to Rule 42 of the Supreme Court Rules, in Support of Appellee's Motion to dismiss the appeal from the judgment of the Supreme Court of Georgia in the above-styled case on the ground that it does not present a substantial federal question for review by this Court.

II. INTEREST OF AMICUS CURIAE

In the Superior Court of Fulton County, Georgia, Appellant sought, inter alia, a declaratory judgment that Ga. Code § 74-203 and Ga. Laws 1941, p. 300, as amended, [Ga. Code Ann. § 74-403(3)] (each statute hereinafter cited as § 74-203 and § 74-403(3), respectively) were unconstitutional as applied to his case. On appeal to the Supreme Court of Georgia, the thrust of Appellant's enumerations of errors and arguments dealt mainly with the trial court's failure to declare said statutes unconstitutional. A brief for the State as Amicus Curiae was filed in the Supreme Court of Georgia pursuant to Ga. Laws 1945, pp. 137, 138 (Ga. Code Ann. § 110-1106), which provides that in such actions alleging a State statute to be unconstitutional, the Attorney General shall be served with a copy of the proceedings and shall be entitled to be heard. The brief of the Attorney General of the State of Georgia, as Amicus Curiae, in Support of Appellee's Motion to dismiss the appeal now before this Court is filed pursuant to the instructions set forth in the Clerk's letter of April 13, 1977, and in accordance with the provisions of Rule 42 of the Supreme Court Rules.

III. STATEMENT OF THE CASE

This is an appeal from a decision of the Supreme Court of Georgia which, inter alia, declined to declare unconstitutional § 74-203 and § 74-403(3), as applied to Appellant, a putative father who was attempting to object to the proposed adoption of his illegitimate child by the child's stepfather, after the mother had given her consent to the adoption. Inasmuch as the facts of this case do not appear to be a matter of substantial dispute between the parties, Amicus will, in the interest of brevity, accept the findings of fact as succinctly stated in the trial court's order (R-34-35).

IV. THE CHALLENGED STATUTES

Ga. Code § 74-203 Mother's rights.

> "The mother of an illegitimate shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all paternal power."

Ga. Code Ann. § 74-403 Adoption of Children -- Consent of Living Parents.

***

(3) Illegitimate children. -- If the child be illegitimate, the consent of the mother alone shall suffice. . . ." Ga. Laws 1941, p. 300, as amended.

V. QUESTION PRESENTED

Whether the challenged statutes as applied to Appellant denied him any rights protected by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

VI. ARGUMENT AND CITATION OF AUTHORITIES

Introduction

This case presented issues of first impression in Georgia. The statutes challenged here, § 74-203 and § 74-403(3), clearly state that the mother of an illegitimate child exercises all the parental power over her child, and that she alone may consent to its adoption. Further, the courts of our State have held that the mother's consent cannot be rendered nugatory by the father's subsequent petition to judicially legitimate the child, Smith v. Smith, 224 Ga. 442 (1968), nor even by the subsequent marriage of the mother and the father. Franklin v. English, 126 Ga. App. 400 (1972). Under current[1/] Georgia law, the father of an

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1/ The General Assembly of Georgia has recently passed an Act to comprehensively revise Georgia's entire adoption law, Ga. Laws 1977, p ___, (Act No. 85, approved February 27, 1977, attached hereto as Appendix "A"). The new law, which becomes effective January 1, 1978, requires inter alia that putative fathers be given notice of pending adoption proceedings and an opportunity to object by the filing of a petition to legitimate the child within 30 days of the receipt of said notice. Appendix "A", p. 13-14.

illegitimate child has no standing to object to the child's adoption except as a friend of the court to show lack of character and unfitness of the applicants for adoption. Clark v. Buttry, 121 Ga. App. 492, aff'd., 226 Ga. 687 (1970).

The potential invalidity of adoption laws such as Georgia's was raised by Stanley v. Illinois, 405 U.S. 64[illegible] (1972) [hereinafter cited as Stanley], which Appellant considers to be the leading case for his position (Appellant's Jurisdictional Statement at p. 10). Amicus would not disagree with the limited holding in Stanley, but submits that the Supreme Court of Georgia was correct in distinguishing Stanley from an adoption case such as the one sub judice.

THE CHALLENGED STATUTES AS APPLIED TO APPELLANT DID NOT DENY HIM ANY RIGHTS PROTECTED BY THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE UNITED STATES CONSTITUTION.

The Stanley Court was reviewing a state dependency statute which purported to make an illegitimate child a ward of the state upon the death of his mother, and to empower the state to take the child out of the custody of a resident putative father without affording him any notice or opportunity to be heard.[2/] As this Court noted, it was undisputed that Peter Stanley had lived

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2/ This simply could not happen in Georgia. Before a state agency could take a motherless child away from a putative father and place the child for adoption, a proceeding would have to be commenced under the Juvenile Court Code, Ga. Code Ch. 24A. A putative father with custody of his child is clearly entitled to notice and an opportunity to be heard in the hearing on the petition to terminate his parental rights. Ga. Code § 24A-3202. Moreover, in Georgia, unlike Illinois, there is no statutory presumption that such a putative father is unfit to retain custody of his child; on the contrary, juvenile courts are specifically authorized to award custody to putative fathers when such would be in the best interest of the child. Ga. Code §§ 24A-2301 and 24A-3202.

intermittently with the childrens' mother for eighteen years, that he had lived with the two children whose custody was challenged all their lives, and that he had supported them as a functional father and custodian. Stanley, supra, at 646.

Under those particular, limited circumstances, the Court concluded that

> "as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." (Emphasis supplied)

Id., at 649.

Thus, it is apparent that Stanley is a carefully tailored custody opinion and one goes too far to insist that in that decision this Court vested every putative father with rights over the destiny of his illegitimate offspring in the adoption setting. In fact, in one case since Stanley in which this Court has had the opportunity to reconsider the rights of a non-custodial putative father, it refused to automatically rule that he stood in the same position as had Peter Stanley. Rothstein v. Lutheran Social Services, 405 U. S. 1051 (1972).

The Rothstein Court also was presented with a broadly written state statute which declared that a putative father had no rights to notice or to be heard in Wisconsin termination proceedings. As in Stanley, there was no question but that the trial court knew of this putative father's existence, was aware

of his acknowledgement of paternity, and was apprised of his asserted claim to custody; nevertheless, he was denied a hearing after the mother's rights had been terminated and the child placed with prospective adoptive parents. State ex rel. Lewis v. Lutheran Social Services, 47 Wis.2d 420, 178 N.W.2d 56 (1970).

The Wisconsin judgment was vacated by this Court and remanded for further consideration in light of its decision in Stanley, but "with due consideration for the completion of the adoption proceedings and the fact that the child has apprently lived with the adoptive family for the intervening period of time." Rothstein, supra. (Emphasis supplied). Thus, by the explicit terms of this order handed down subsequent to Stanley, this Court has indicated that there are factually distinquishable cases within the broad class of putative fathers and specifically pointed to the interest of the child eligible for adoption as a factor to be weighed in the judicial balance.

Of greatest importance to the consideration of the issues presented in the instant case, however, is this Court's recent dismissal "for want of a substantial federal question" of an appeal from the New York Court of Appeals which upheld the constitutionality of an adoption statute dispensing with the consent of a father of an illegitimate child despite the fact that he had lived with the mother and child for two years, had admitted paternity in an affiliation proceeding, had been ordered to pay child support, and had apparently complied to some extent with that order. In re Adoption of Malpica-Orsini, 36 N.Y.2d 568, 370 N.Y.S.2d 511, 331 N.E.2d 486 (1975), appeal dismissed, 96 S.Ct. 765 (1976) [this case is also sometimes cited as Orsini v. Blasi, and will be hereinafter referred to as Orsini]. In Orsini

as in the present case, the father of an illegitimate child was appealing from a decree of adoption granted to a man whom the natural mother had subsequently married. Although under the New York statute no notice of adoption proceedings was required to be given to the putative father, the trial court accorded Orsini a full hearing with representation by counsel; therefore, the appellate court held that he had not been denied due process. Orsini, supra, 36 N.Y.2d at 576. The same rights were given to Appellant in the present case; thus, by the same rationale, due process was not lacking here.

In Orsini, the court emphasized the great benefits of adoption of an out-of-wedlock child from a child-welfare standpoint, and took heed of the apprehension of experts about the effect on adoptions of "the new legalities" engendered by unwed fathers to their children,the New York court concluded that beneficial adoptions would be prevented "or at the very least...severely impeded" if unwed fathers were to have the same veto power over the adoption of their children as wed fathers. Id., at 572.

As the Orsini court recognized in its discussion of equal protection, there is nothing in the precedents of this Court to suggest that a state is powerless to distinguish among fathers in its statutory classification scheme in the area of adoption. Id., at 574. Although Appellant has cited the companion cases of Glona v. American Guarantee & Liab. Ins. Co., 319 U.S. 73 (1968) and Levy v. Louisiana, 391 U.S. 68 (1968) [Appellant's Jurisdictional Statement at p. 6], Amicus would point out that subsequent

decisions, serving to clarify this Court's attitude toward classifications based on illegitimacy, indicate (1) that the "rational basis" test is to be used in judging such statutes, and (2) that they will only be struck down when the State has created an insurmountable barrier based solely on illegitimacy. See, Matthews v. Lucas, ___ U.S. ___ (44 U.S.L.W. 5139, June 29, 1976); Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972); Labine v. Vincent, 401 U.S. 532 (1970) [hereinafter cited as Labine]. As the Labine Court explained in discussing Louisiana's intestate succession laws:

> "We emphasize that this is not a case, like Levy, where the State has created an insurmountable barrier to this illegitimate child. There is not the slightest suggestion in this case that Louisiana has barred this illegitimate from inheriting from her father. Ezra Vincent could have left one-third of his property to his illegitimate daughter had he bothered to follow the simple formalities of executing a will. He could, of course, have legitimated the child by marrying her mother in which case the child could have inherited his property either by intestate succession or by a will as any other legitimate child. Finally, he could have awarded his child the benefits of Louisiana's intestate succession statute on the same terms as legitimate children simply by stating in his acknowledgment of paternity his desire to legitimate the little girl."

Labine, supra, at 539.

Amicus would respectfully submit that, just as in Labine, the Georgia statutory adoption scheme presents no insurmountable barrier to an unwed father such as Appellant. Appellant could have married the child's mother after its birth and his recognition of the child as his would have rendered it legitimate. Ga. Code § 74-101. Or, he could legitimate the child through court proceedings pursuant to Ga. Code § 74-103. Appellant had these options available to him, but chose not to exercise them. Instead, he allowed his child to be branded illegitimate throughout its entire eleven-year life, and only became concerned with "legalities" in a last-minute effort to thwart an adoption which would give the child a sense of permanence in the loving, stable home established by the mother and stepfather.

The public policy considerations which weigh against actions such as Appellant's, and in favor of final adoptive placements of illegitimate children are enormous. The best compendium of these policy implications is found, again, in Orsini:

> "Illegitimacy and family breakdown have become problems on an unprecedented scale in modern industrial society. Never before have there been so many thousands of children for whom society finds each year that it must make some provision.
>
> To require the consent of fathers of children born out-of-wedlock, or even some of them, would have the overall effect of denying homes to the homeless and depriving innocent children of the other blessings of adoption. The cruel and undeserved out-of-wedlock stigma would continue its visitations.

***

> Couples considering adoption will be dissuaded out of fear of subsequent annoyance and entanglements . . . . The burden on charitable agencies will be oppressive. . . . Institutions such as foundling homes which nurture the children for months could not afford to continue their maintenance, in itself not the most desirable,... if wards [are] unplaceable. These philanthropic agencies would be reluctant to take infants, for no one wants to bargain for trouble in an already tense situation. The drain on the public treasury would also be immeasurably greater in regard to infants placed in foster homes and public agencies.
>
> Some of the ugliest disclosures of our time involve black marketing of children for adoption. One need not be a clairvoyant to predict that the grant to unwed fathers of the right to veto adoptions will provide a very fertile field for extortion....
> While it may appear, at first blush, that a father might wish to free himself of the burden of support, there will be many who will interpret it as a chance for revenge or an opportunity to recoup their 'losses.'
>
> Marriages would be discouraged because of the reluctance of prospective husbands to involve themselves in a family situation where they might only be a foster parent and could not adopt the mother's offspring."

Orsini, supra, at 573-74.

Amicus would submit that these and other similar policy considerations, well within the contemplation of the Georgia General Assembly, form more than an adequate rational basis for whatever slight "discrimination" the adoption statutes may work against a man who deliberately chooses not to legitimate his offspring. Indeed, judged by an even stricter standard, the child's welfare should be considered by the State as the one "powerful countervailing interest" mentioned in Stanley, supra, at 651, which would always offset the father's private interests.

It is undoubtedly true that Stanley has engendered more than a little confusion in the courts of this land. Some post-Stanley and pre-Orsini decisions routinely applied the Stanley custody rationale to the adoption setting, whereas others were more careful to qualify its applicability. See, e.g., Miller v. Miller, 504 F.2d 1067 (9th Cir. 1974); Catholic Charities v. Zalesky, 232 N.W.2d 539 (Iowa, 1975); In re M., 321 A.2d 19 (Vermont, 1974); State ex rel, Lewis v. Lutheran Social Services, 207 N.W.2d 286 (Wisc. 1973); People ex rel. Slawek v. Covenant Children's Home, 284 N.E.2d 291 (Ill., 1972).

Now, however, this Court's dismissal of Orsini on the stated grounds so limits Stanley that the latter case can no longer be deemed controlling in adoption cases. Amicus is of the firm conviction that putative fathers already have available to them ample opportunity to protect their paternal interests under Georgia law, and that to strike the statutes challenged here would only be to condemn thousands of innocent children to the anguished limbo of unadoptability.

CONCLUSION

The statutes challenged herein clearly rest upon a rational policy basis and the Georgia Supreme Court was correct in holding that their application to Appellant's case did not violate any of his rights protected by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. Therefore, we ask this Honorable Court to dismiss the appeal from the judgment below.

Respectfully submitted,

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ENROLLMENT

February 24, 1977

The Committee of the Senate on Enrolling and Journals has examined the within and finds the same properly enrolled.

Edward H. Johnson
Chairman

Lee M. Miller
President of the Senate

Hamilton McWhorter, Jr.
Secretary of the Senate

Thomas B. Murphy
Speaker of the House

Glenn Ellard
Clerk of the House

Received Tom L. Linton
Secretary, Executive Department
This 25th day of February 1977

Approved
George Busbee
Governor
This 25th day of February 1977

S. B. No. 18 Act No. 85

General Assembly

AN ACT

To revise the adoption laws of this State; to provide for jurisdiction and venue in adoption proceedings; to define who may adopt children; to require surrender or termination of parental rights prior to adoption except in certain cases; to set forth the requirements and form of a surrender of parental rights; and for other purposes.

IN SENATE

Read 1st time Jan. 11, 1977
Read 2nd time Jan. 14, 1977
Read 3rd time Jan. 17, 1977
And Passed

Yeas 47 Nays 2

Hamilton McWhorter, Jr.
Secretary of the Senate

IN HOUSE

Read 1st time Jan. 18, 1977
Read 2nd time Jan. 31, 1977
Read 3rd time Feb. 8, 1977
And Passed

Yeas 169 Nays 1

Glenn Ellard
Clerk of the House

By: Senators Shapard of the 28th, Howard of the 42nd, Banks of the 17th and others

APPENDIX "A"

AN ACT

To comprehensively revise the adoption laws of this State; to provide for jurisdiction and venue in adoption proceedings; to define who may adopt children; to require surrender or termination of parental rights prior to adoption except in certain cases; to set forth the requirements and form of a surrender of parental rights; to require that in certain cases notice be given to the putative father of a child to be adopted; to specify the contents of an adoption petition; to require an accounting report of petitioner and his attorney; to provide for the date of the final hearing and service; to require an investigation report for certain adoptions; to allow objections to the adoption by relatives in certain situations; to allow for the appointment of a guardian ad litem; to establish procedures for hearing an adoption petition; to establish the effect of a decree of adoption; to provide for notice of the adoption; to provide for the adoption of adult persons; to establish the effect of a foreign judgment of adoption; to provide for the secrecy of adoption records; to provide penalties for illegal advertising of adoptions and illegal advertisements for persons to place their child for adoption; to provide penalties for illegal inducements for persons to place their child for adoption; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. The Code of Georgia is hereby amended by striking Code Chapter 74-4 in its entirety and substituting in lieu thereof the following new Code Chapter 74-4 and to read as follows:

"CHAPTER 74-4 ADOPTION

SECTION 74-401 JURISDICTION AND VENUE.

The superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption, except such jurisdiction as may be granted to the juvenile courts. All petitions for adoption shall be filed in the county in which the adopting parent(s) resides, except that upon good cause being shown, the court of the county of the child's domicile or of the county in which is located any licensed child-placing agency having legal custody of the child sought to be adopted may, in its discretion, allow the petition to be filed in that court.

SECTION 74-402 WHO MAY ADOPT.

Any adult person may petition for leave to adopt a child if such person is (1) at least twenty-five (25) years of age, or (2) married and living with husband or wife. If a person is married, the petition must be filed in the name of both husband and wife, except where the child is the stepchild of the party seeking to adopt, in which event the petition may be filed by the stepparent alone. The petitioner(s) must be at least ten (10) years older than the child, a resident of this State and financially, physically, morally fit and mentally able to have the permanent custody of the child.

SECTION 74-403 SURRENDER OR TERMINATION OF PARENTAL RIGHTS REQUIRED.

(a) Except as otherwise specified in Code Section 74-405, no adoption of a child with a living parent(s) or guardian(s) of his person shall be permitted except where (1) the parent(s) or the guardian(s) of the child has voluntarily and in writing surrendered all of his rights to the child to the Department of Human Resources or a licensed child-placing agency or the parent(s) or the guardian(s) of the child has had his rights terminated by order of a court of competent jurisdiction and the child has been committed by said court to the Department of Human Resources or a licensed child-placing agency for placement for adoption and the Department or agency thereafter consents to the adoption; or (2) the parent(s) or the guardian(s) of the child has voluntarily and in writing surrendered all of his rights to the child to a third person(s) for the purpose of enabling that person(s) to adopt said child; or (3) a parent of the child has voluntarily and in writing surrendered all of his rights to the child to the spouse of the other parent of said child and such other parent, if living, consents to the adoption; or (4) the parent(s) of the child has voluntarily and in writing surrendered all of his rights to the child to a relative who is either a parent, brother or sister, aunt or uncle, or son or daughter of either parent; or (5) where a child has been placed for adoption by a juvenile court, or other court of competent jurisdiction, which has terminated the parental rights of the parents.

(b) A petition for adoption pursuant to Code Section 74-403(a)(2) shall be filed within sixty (60) days from the date of the surrender; otherwise, except in cases of excusable neglect, said surrender shall operate in favor of the Department of Human Resources for placement for adoption pursuant to Code Section 74-403(a)(1).

(c) In the case of a child fourteen (14) years of

age, or older, the written consent of the child must be given or acknowledged in the presence of the court.

SECTION 74-404 SURRENDER OF PARENTAL RIGHTS.

(a) The surrender to the Department of Human Resources or a licensed child-placing agency specified in Code Section 74-403(a)(1) shall be executed following the birth of the child in the presence of a representative of the Department or agency and a notary. A surrender pursuant to subsection (a)(2),(3) or (4) of Code Section 74-403 shall be executed following the birth of the child in the presence of a notary. A copy shall be delivered to the parent(s) or guardian(s) signing such surrender at the time of the execution thereof. In the case of a surrender pursuant to Code Section 74-403(a)(2) the name and address of the person(s) to whom the child is surrendered may be omitted to protect confidentiality provided the surrender sets forth the name and address of his agent for purposes of notice of withdrawal as provided for in Code Section 74-404(b).

(b) A parent or guardian signing a surrender shall have the right to withdraw the surrender by written notice within ten (10) days after signing and the surrender document shall not be valid unless it so states. Thereafter a surrender may not be withdrawn. The notice of withdrawal of surrender shall be delivered in person or by registered mail to the person or agency, at the address designated in the surrender document.

(c) (1) The surrender as specified in Code Section 74-403(a)(1), (3) or (4) shall conform substantially to the following:

SURRENDER OF PARENTAL RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title and claim to the child named herein, so as to facilitate the child's placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten (10) days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born _____, and now _____ (days) (weeks) (months) (years) old, should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child do hereby surrender said child to (insert name of child-placing agency, stepparent or relative) and promise not to interfere in the management of said child in any respect whatever, and in consideration of the benefits guaranteed by (insert name of child-placing agency, stepparent or relative) in thus providing for said child, I do relinquish all rights, title and claim to the child herein named, it being my wish, intent and purpose to relinquish absolutely all parental control over said child.

[Optional paragraph to be used
with child-placing agency]

Furthermore, I hereby agree that said (insert name of child-placing agency) may seek for said child a legal adoption by such person or persons as may be chosen by said (insert name of child-placing agency) or its authorized agents without further notice to me. I do, furthermore, expressly waive any other notice or service

in any of the legal proceedings for the adoption of said child.

[Optional paragraph to be used in case of stepparent or relative adoption]

Furthermore, I hereby agree that said (insert name of stepparent or relative) may initiate legal proceedings for the legal adoption of said child without further notice to me. I do, furthermore, expressly waive any other notice or service in any of the legal proceedings for the adoption of said child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or by registered mail, to (insert name and address of child-placing agency, stepparent or relative) within ten (10) days from the date hereof; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document, and do so freely and voluntarily.

Witness my hand and seal this _____ day of _____, _____.

_____(SEAL)
(Parent or guardian)

_____
Unofficial Witness

_____
Notary Public

(2) The surrender as specified in Code Section 74-403(a)(2) shall conform substantially to the following:

FINAL RELEASE FOR ADOPTION

NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title and claim to the child named herein, so as to facilitate the child's placement for adoption. You are entitled to receive a copy of this document and as explained below have the right to withdraw your surrender within ten (10) days from the date you sign it.

_____

I, the undersigned, being solicitous tnat my (male) (female) child, born _____, and now _____ (days) (weeks) (months) (years) old, should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child do hereby surrender said child to (insert name of person(s) desiring to adopt said child), PROVIDED such person(s) files a petition for adoption of said child in accordance with the provisions of Georgia Code Chapter 74-4 within sixty (60) days from the date hereof. Furthermore, I promise not to interfere in the management of said child in any respect whatever, and in consideration of the benefits guaranteed by said person(s) in thus providing for said child, I do relinquish all right, title and claim to the child herein named, it being my wish, intent and purpose to relinquish absolutely all parental control over said child.

It is also my wish, intent and purpose that if such person(s) fails to file a petition for adoption as

provided for above within said sixty-day period, other than for excusable neglect, then I do hereby surrender said child to the Department of Human Resources for placement for adoption and said Department of Human Resources may petition the Superior Court for custody of said child in accordance with the terms of this surrender.

Furthermore, I hereby agree that said child is to be adopted either by the person(s) named above or by such person(s) as may be chosen by said Department of Human Resources and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of said child.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or by registered mail, to (insert name and address of agent of person(s) desiring to adopt said child) within ten (10) days from the date hereof; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document, and do so freely and voluntarily.

Witness my hand and seal this ____ day of _____, _____.

_____(SEAL)
(Parent or Guardian)

_____
Unofficial Witness

_____
Notary Public

(3) Whenever parental rights are surrendered to the Department of Human Resources or a licensed child-placing agency, the agency representative before whom the surrender is signed shall execute an affidavit in substantially the following form:

AFFIDAVIT OF AGENCY REPRESENTATIVE

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, who, after having been sworn, deposes and says as follows:

That I am _____(position)_____ of _____(Department or agency)_____.

Prior to the execution of the accompanying SURRENDER OF PARENTAL RIGHTS/FINAL RELEASE FOR ADOPTION by _____(hereinafter referred to as "parent"), releasing and surrendering all of (his)(her) rights in a (male)(female) minor child born _____, I reviewed with and explained to the parent all of the provisions of the surrender, and particularly the provisions which provide that said surrender is a full surrender of all parental rights.

Based on my review and explanation to said parent, it is my opinion that the parent knowingly, intentionally, freely and voluntarily executed the surrender of parental rights.

_____
(Agency representative)

Sworn to and subscribed before me this _____ day of _____, _____.

_____
Notary Public

(4) A surrender of parental rights shall be acknowledged by the parent(s) or guardian(s) signing in substantially the following form:

ACKNOWLEDGMENT OF SURRENDER:

OF PARENTAL RIGHTS

By execution of this paragraph, the undersigned expressly acknowledges: (1) that I have read the accompanying SURRENDER OF PARENTAL RIGHTS/FINAL RELEASE FOR ADOPTION to my minor child born _____, a (female)(male); (2) that I understand that this is a full, final and complete surrender, release and termination of all of my rights to said child; (3) that I have the unconditional right to revoke said surrender by giving written notice, delivered in person or by registered mail, to (insert name and address) not later than ten days from the date of the surrender and that after such ten-day period I shall have no right to revoke the surrender; (4) that I have read the accompanying surrender and received a copy thereof; (5) that any and all questions regarding the effect of said surrender and its provisions have been satisfactorily explained to me; (6) that I have been afforded an opportunity to consult with counsel of my choice prior to execution of the surrender; and (7) that the surrender of my rights has been knowingly, intentionally, freely and voluntarily made by me.

Witness my hand and seal this ____ day of _____, _____.

_____(SEAL)
(parent or guardian)

(5) Whenever the biological mother surrenders her parental rights she shall execute an affidavit as to the identity and location of the putative father in substantially the following form:

MOTHER'S AFFIDAVIT

REGARDING PUTATIVE FATHER

NOTICE TO MOTHER:

This is an important legal document which deals with your child's right to have its biological father's rights properly terminated. You have the right not to disclose the name and address of the father of your child. Understand that you are providing this affidavit under oath and that the information provided will be held in strict confidence and will be used only in connection with the adoption of your child.

Personally appeared before me, the undersigned officer duly authorized to administer oaths, _____, who, after having been sworn, deposes and says as follows:

That I am the mother of a (male) (female) minor child born _____.

That the name of the biological father of my child is _____, and his last known address is _____.

_____.

Sworn to and subscribed
before me this _____
day of _____,
_____.

_____
Notary Public.

(d) A surrender, when required, may be given by the parent(s) of the child sought to be adopted irrespective of whether such parent, or either, or both of them have arrived at the age of majority. The surrender given by such minor parent(s) shall be binding

upon him as if such parent(s) were in all respects sui juris.

(c) A copy of the surrender specified in Code Section 74-404(c)(2) together with a copy of the affidavit specified in Code Section 74-404(c)(5) and the name and address of the person(s) to whom the child is surrendered shall be mailed, by registered or certified mail, return receipt requested, by said person(s) to the Adoption Supervisor, Georgia Department of Human Resources, Atlanta, Georgia 30334, within fifteen (15) days from the execution thereof. Upon receipt of said copy the Department of Human Resources may commence its investigation as required in Code Section 74-409.

SECTION 74-405 SURRENDER OR TERMINATION OF PARENTAL RIGHTS NOT REQUIRED.

(a) Surrender or termination of parental rights as provided in Code Section 74-403 shall not be required as a prerequisite to adoption pursuant to subsections (a)(1), (a)(2), (a)(3) or (a)(4) of Code Section 74-403 where a child has been abandoned by a parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from surrendering such rights and the court is of the opinion that the adoption is for the best interest of the child, nor shall a surrender or termination of parental rights as provided in Code Section 74-403 be required as a prerequisite to adoption pursuant to subsections (a)(3) or (a)(4) of Code Section 74-403 in the case of a parent who has failed significantly without justifiable cause for a period of one year or longer immediately prior to the filing of the petition for adoption

(1) to communicate, or to make a bona fide attempt to communicate with the child, or

(2) to provide for the care and support of the child as required by law or judicial decree.

(b) Whenever it is alleged that surrender or termination of parental rights is unnecessary because of subsection (a), the allegedly defaulting parent(s) shall be personally served with the adoption petition or, if personal service cannot be perfected, by registered or certified mail, return receipt requested, at his last known address. If service cannot be made by either of these methods, the parent(s) shall be given notice by publication once a week for three weeks in the official organ of the county where the petition has been filed.

SECTION 74-406 NOTICE TO PUTATIVE FATHER.

(a) If the identity and location of the putative father of an illegitimate or legitimate child is known or reasonably ascertainable and he has not executed a surrender as provided in Code Section 74-404(c), then he shall be notified of the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate her parental rights by registered or certified mail, return receipt requested, at his last known address.

(b) If the identity and location, or either, of the putative father of an illegitimate or legitimate child is not known or reasonably ascertainable then upon motion by either the petitioner(s), Department of Human Resources, or licensed child-placing agency the Court, as soon as practicable, shall make such inquiry as it deems appropriate under the circumstances and shall determine whether the identity and location of the putative father is ascertainable, and whether the putative father lived with the child, contributed to its support, or has given any other tangible indication of interest in the child, so as to entitle him to notice of

the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate. If the Court identifies the putative father and determines that he is entitled to notice of the mother's surrender or the proceeding to terminate her parental rights it shall enter an appropriate order designed to afford him such notice. If after inquiry the Court is unable to identify the putative father or concludes that he is not entitled to notice of the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate her parental rights the Court shall enter an order terminating the putative father's rights with reference to the child.

(c) When notice is to be given pursuant to subsection (a) or (b) above, it shall advise the putative father that he loses all rights to the child and will neither receive notice nor be entitled to object to the adoption of the child unless he files (1) a petition to legitimate the child pursuant to Code Section 74-103, and (2) notice of such petition to legitimate with the court in which the adoption is pending, within thirty (30) days of receipt of such notice.

(d) If a legitimation petition is not filed by the putative father and notice given as required in subsection (c) above within thirty (30) days of his receipt of notice, as provided for in subsection (a) or (b) above, or if after filing such petition, he fails to prosecute it to final judgment he loses all rights to the child and he may not thereafter object to the adoption and is not entitled to receive notice of the adoption.

(e) If the child is legitimated by the putative father, the adoption shall not be permitted except as

provided in Code Sections 74-403 through 405.

SECTION 74-407 PETITION AND CONTENTS.

(a) The petition, duly verified, together with two (2) conformed copies thereof, must be filed with the clerk of the superior court having jurisdiction, and shall set forth the name, age and place of the residence of the petitioner(s); the name by which the child is to be known should the adoption ultimately be completed; the date of birth and sex of the child; the date and circumstances of the placement of the child with petitioner(s); whether such child is possessed of any property and, if so, a full and complete description thereof; whether the child has one or both parents living; or whether the child has a guardian of its person. Where the adoption is pursuant to Code Section 74-403(a)(1), an affidavit from the Department of Human Resources or a licensed child-placing agency shall be provided (or attached) when the petition is filed stating that all provisions of Code Sections 74-403(a)(1), 74-404 and 74-406, if applicable, have been complied with along with the written consent of said Department or agency to the adoption. Where the adoption is pursuant to Code Section 74-403(a)(2) the written voluntary surrender of such parent(s) or guardian(s), specified in Code Section 74-404(c)(2), together with the affidavit specified in Code Section 74-404(c)(5), shall be provided (or attached) when the petition is filed together with allegations of compliance with the provisions of Code Section 74-406, if applicable. Where the adoption is pursuant to Code Section 74-403(a)(3) or (4) the written voluntary surrender of such parent(s), specified in Code Section 74-404(c)(1), together with the affidavit specified in Code Section 74-404(c)(5), shall be provided (or

attached) when the petition is filed togetner with allegations of compliance with provisions of Code Section 74-406, if applicable. Where Code Section 74-405 is applicable, the parental rights need not be surrendered or terminated prior to the filing of the petition but petitioner(s) shall allege facts demonstrating the applicability of Code Section 74-405 and allege compliance with Code Section 74-405(b). If the petition is filed in a county other than that of the petitioner's residence, the reason therefor must also be set forth in the petition. At the time of filing the petition, the petitioner(s) shall deposit with the clerk the deposit required by Code Section 24-3406, as amended, and the fees shall be those established by Code Section 24-2727, as amended.

(b) Except as specified in subsection (c), the petitioner(s) in any proceeding for the adoption of a minor shall file, with the petition, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made directly or indirectly, by, on behalf or for the benefit of the petitioner(s) in connection with the adoption. The report shall show any expenses incurred in connection with:

(1) The birth of the minor;

(2) Placement of the minor with petitioner(s);

(3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and

(4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner(s), either natural parent of the minor, or any other

person.

(c) Subsection (b) does not apply to an adoption pursuant to Code Section 74-403(a)(1), (3) or (4).

(d) Every attorney for the petitioner(s) in any proceeding for the adoption of a minor wherein the petitioner(s) is required to file an accounting under the provisions of subsection (b), shall file, before the decree of adoption is entered, an affidavit in a manner acceptable to the court of all sums paid or promised him, from whatever source, for all services rendered or to be rendered (regardless of their nature) in connection with the adoption. Provided however, that if the attorney received less than five hundred dollars his affidavit need only state that fact.

(e) Any report made under this Section must be signed and verified by the individual making such report.

SECTION 74-408 NOTICE OF DATE OF HEARING; SERVICE.

Upon filing of the petition, the court shall fix a date upon which the petition for adoption shall be considered which shall be not less than sixty (60) days from the date of filing of the petition. A copy of the petition, order fixing the date upon which the petition shall be considered, and copies of all exhibits, surrenders or certificates, as required by this Code Chapter, shall be forwarded by the clerk to the Department of Human Resources within fifteen (15) days after the filing of the petition for adoption, together with a request that a report and investigation be made as required by law.

SECTION 74-409 INVESTIGATION BY DEPARTMENT OF HUMAN RESOURCES OR OTHER AGENCY.

(a) Prior to the date set by the court for a

hearing on the petition for adoption, it shall be the duty of the Department of Human Resources through its own agents, one of its licensed child-placing agencies or through any other agency appointed by the Department of Human Resources, to verify the allegations in the petition for adoption and to make a complete and thorough investigation of the entire matter, and to report its findings and recommendations in writing to the court where the petition for adoption was filed. If for any reason the Department of Human Resources shall find itself unable to make or arrange for the proper investigation and report, it shall be the duty of the Commissioner of the Department to notify the court immediately, or at least within twenty (20) days after receipt of the request for investigation service, that it is unable to make such report and investigation so that the court may take such other steps as in its discretion are necessary to have the entire matter investigated.

(b) If the petition has been filed pursuant to Code Section 74-403(a)(3) or (4), the Department of Human Resources is authorized but not required to make an investigation and shall do so whenever requested by the court, in whatever form the court specifies.

SECTION 74-410 REPORT AND RECOMMENDATION.

(a) The report and findings of the investigating agency shall, among other things, include the following:

(1) Verification of allegations contained in the petition.

(2) Circumstances under which the child came to be placed for adoption.

(3) Whether the proposed adoptive parent(s) is financially (including adoption supplement if approved by the Department of Human Resources),

physically and mentally able to have the permanent custody of the child.

(4) The physical and mental condition of the child to be adopted insofar as this can be determined by the aid of competent medical authority.

(5) Whether or not the adoption is for the best interests of the child, including general care.

(6) Suitability of the home to the child.

(7) Whether the identity and location of a putative father is known, or ascertainable and whether the requirements of Code Section 74-406 were complied with, if applicable.

(8) Any other information that might be disclosed by the investigation that would be of any value or interest to the court in deciding the case.

(b) If the report of the Department of Human Resources or the licensed child-placing agency as provided herein, disapproves of the adoption of the child, motion may be made by said Department or by the licensed child-placing agency to the court to dismiss the petition, and the court after hearing is authorized to do so. If the court denies the motion to dismiss, the court shall appoint a guardian ad litem who may appeal such ruling to the Court of Appeals or Supreme Court, as in other cases, as now or hereafter provided by law.

(c) If at any time it appears to the court that the interests of the child may conflict with those of the petitioner(s), the court may, in its discretion, appoint a guardian ad litem to represent the child and the cost thereof shall be a charge upon the funds of the

county.

(d) If the petition is denied, the court shall remand the child to the custody of the Department of Human Resources or licensed child-placing agency if the adoption petition was filed pursuant to subsection (1) or (2) of Code Section 74-403(a). If the adoption petition was filed pursuant to subsection (3) or (4) of Code Section 74-403(a), the child shall remain in the custody of petitioner(s) if he is fit to have custody or the court may place the child with the Department of Human Resources for the purpose of determining whether or not a petition should be initiated under the Juvenile Court Code of Georgia.

SECTION 74-411 OBJECTION BY RELATIVE TO PETITION FOR ADOPTION.

It shall be the privilege of any person related by blood to the child sought to be adopted, if there is no father or mother living, to file objections to the petition for adoption, and the court, after hearing the same, shall determine, in its discretion, whether or not the same constitute a good reason for denying the petition.

SECTION 74-412 HEARING AND DECREE OF ADOPTION.

(a) (1) Upon the date appointed by the court for a hearing of the petition for adoption, or as soon thereafter as the matter may be reached for a hearing, the court shall proceed to a full hearing on the petition and the examination of the parties at interest in chambers, under oath, with the right of continuing the hearing and examinations from time to time as the nature of the case may require. The court at such times shall give consideration to the investigation report to the court provided for

in Code Section 74-409 and the recommendations therein contained.

(2) If the court determines from the report or otherwise that the identity and location of the putative father of an illegitimate or legitimate child have been ascertained or are ascertainable and that he is entitled to notice as provided in Code Section 74-406 and has not received such notice, the court shall within five (5) days following such hearing cause the notice requirement of Code Section 74-406 to be satisfied. The hearing shall be continued for at least thirty (30) days following notice to the putative father to allow him to legitimate the child or to surrender all his rights to said child. If the putative father files a petition to legitimate the child within such thirty-day period, the court shall fix a time for a hearing thereon which shall not be later than thirty (30) days from the date of filing of said petition. If a petition to legitimate the child is not filed within thirty (30) days following receipt of notice, or if the petition is not prosecuted to final judgment, such failure shall constitute the surrender by the putative father of all his rights to said child as provided in Code Section 74-406(d) and the court shall proceed with the final hearing on the petition for adoption. If the child is legitimated by the putative father, the adoption shall not be permitted except as provided in Code Sections 74-403 through 405.

(b) If the court is satisfied that the parent(s) or guardian(s) of the child has been relieved of the care, support and guardianship and all rights to said

child in the manner provided by law and that the petitioner(s) is capable of assuming responsibility for the care, supervision, training and education of the child, and that the child is suitable for adoption in a private family home and that the adoption requested is for the best interests of the child, it shall enter a decree of adoption, granting the permanent custody of the child to the petitioner(s), and declaring said child to be the adopted child of the petitioner(s).

(c) If the court shall determine that the petitioner(s) has not complied with the provisions of this Code Chapter, it may dismiss the petition for adoption without prejudice or continue the cause. Should the court find that any notice required under this Chapter to be given by the petitioner has not been given or not properly given, or that said petition has not been properly filed, then said court is authorized to enter an order providing for corrective action and an additional hearing.

(d) If the court is not satisfied that the adoption is for the best interests of the child, it shall deny the petition and commit the child to the custody of the Department of Human Resources or a licensed child-placing agency, if the petition was filed pursuant to subsection (1) or (2) of Code Section 74-403(a). If the petition was filed pursuant to subsection (3) or (4) of Code Section 74-403(a), the child shall remain in the custody of the petitioner(s) if he is fit to have custody or the court may place the child with the Department of Human Resources for the purpose of determining whether or not a petition should be instituted under the Juvenile Court Code of Georgia.

SECTION 74-413 EFFECT OF DECREE OF ADOPTION.

(a) A decree of adoption, whether issued by a

court of this State or of any other jurisdiction shall have the following effect as to matters within the jurisdiction or before a court in this State:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parent(s) of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his relatives, including his natural parent(s), so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and

(2) To create the relationship of parent and child between petitioner(s) and the adopted individual, as if the adopted individual were a child of natural bodily issue of petitioner(s), and he shall enjoy every right and privilege of a natural child of petitioner(s); and shall be deemed a natural child of petitioner(s) to inherit under the laws of descent and distribution in the absence of a will and to take under the provisions of any instrument of testamentary gift, bequest, devise or legacy, whether executed before or after the adoption is decreed, unless expressly excluded therefrom; and shall take by inheritance from relatives of the petitioner(s); and shall also take as a 'child' of the petitioner(s) under a class gift made by the will of a third person.

(b) Notwithstanding the provisions of subsection (a), if a parent of a child dies without the relationship of parent and child having been previously terminated the child's right of inheritance from or through the deceased is unaffected by the adoption.

SECTION 74-414 NOTICE OF ADOPTION.

Upon the entry of the decree of adoption, the clerk of the court granting the same shall forward a copy of said decree, together with the original of the investigation report filed with the court, to the Department of Human Resources. If there shall be any subsequent order or revocation of said adoption a copy of same in like manner shall be forwarded by the clerk to the Department of Human Resources. At any time after the entry of the decree of adoption, the clerk of the court granting the same shall, upon the request of the adopting parents, issue to said adopting parents a certificate of adoption, under the seal of the court, upon payment to him of the fee prescribed in Code Section 24-2727, relating to fees of clerks of the superior courts, as amended, which adoption certificate shall be received as evidence in any court or proceeding as primary evidence of the facts contained in said certificate. Said adoption certificate shall be in substantially the following form:

This is to certify _____ (names of adopting parents) _____ have obtained a decree of adoption in the Superior Court of _____ County, Georgia, on the _____ day of _____, _____, as shown by their records on _____ (full name of adopted child) _____.

Given under the hand and seal of said court, this the _____ day of _____, _____.

Clerk

SECTION 74-415 ADOPTION OF ADULT PERSONS.

(a) Adult persons may be adopted on giving written consent to such adoption. In such cases, adoption shall be by a petition duly verified and filed, together with two conformed copies, in the superior court in the county in which either the petitioner(s) or the adult to be adopted resides, setting forth the name, age and residence of petitioner(s), and of the adult to be adopted, the name by which the said adult is to be known, and his written consent to the adoption. The court may at any time, whether at term time or in vacation, assign the said petition for hearing, and after examining the petitioner(s) and the adult sought to be adopted, the court, if satisfied that there is no reason why said adoption should not be granted, shall enter a decree of adoption and change the name of the adopted adult, if requested. Thereafter the relation between such petitioner(s) and the adopted adult shall be, as to their legal rights and liabilities, the relation of parent and child.

(b) The provisions of Code Section 74-413, relating to the effect of a decree of adoption, and the provisions of Code Section 74-414, relating to notice of adoption, shall also apply to the adoption of adults.

SECTION 74-416 EFFECT OF FOREIGN JUDGMENT.

A decree of a court terminating the relationship of parent and child or establishing the relationship of parent and child by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this State and the rights and obligations of the parties as to matters within the jurisdiction of this State shall be determined as though the decree were

issued by a court of this State.

SECTION 74-417 RECORDS; WHERE KEPT; EXAMINATION.

The original petition, all amendments thereto, and all decrees or orders of any kind whatsoever, except the original investigation report of the investigating agent as provided for in Code Section 74-409, shall be recorded in a book kept for that purpose and properly indexed; and such books shall be part of the records of the court in each county that has jurisdiction over matters of adoption in that county. All of the records of the court granting the adoption (including the docket book) and of the Department of Human Resources that relate in any manner to the adoption shall be kept sealed and locked and can only be examined when, after written petition has been presented to the court having jurisdiction, the said court has entered an order permitting such examination. The records relating in any manner to adoptions shall not be open to the general public for inspection. Only the parties at interest in the adoption and their attorneys shall have the right to examine such records, and then only when good cause has been shown in writing to the court and an order entered thereon, as hereinbefore provided in this Section.

SECTION 74-418 UNLAWFUL ADVERTISEMENTS AND UNLAWFUL INDUCEMENTS; PENALTY.

(a) It shall be unlawful for any person or persons, organizations, corporation, hospital, or association of any kind whatsoever which has not been established as a licensed child-placing agency by the Department of Human Resources to advertise in any periodical, by television, by radio, or any other public medium, or by any private means including letters, circulars, handbills, and oral statements, that they will adopt children or arrange for, or cause children to be adopted or placed for adoption or to directly or indirectly hold out inducements to parents to part with their children.

(b) Any person violating the provisions of this Section shall be guilty of a felony and shall be fined not more than $10,000 or imprisoned for not more than ten (10) years, or both, in the discretion of the court."

Section 2. An Act approved March 27, 1941 (Ga. Laws 1941, p. 300), as amended, amending and revising the adoption laws, as amended, is hereby repealed in its entirety.

Section 3. In the event any Section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the Section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 4. This Act shall become effective January 1, 1978.

Section 5. All laws and parts of laws in conflict with this Act are hereby repealed.

AFFIDAVIT OF SERVICE

I, CAROL ATHA COSGROVE, pursuant to Rule 33(3)(c) of the Rules of the Supreme Court of the United States, do hereby depose and say under oath that I have served the opposing parties with the foregoing BRIEF OF THE STATE OF GEORGIA IN SUPPORT OF APPELLEE'S MOTION TO DISMISS by depositing said copies in the United States Mail, in properly addressed envelopes, with adequate first class postage thereon, addressed to:

William L. Skinner
Attorney at Law
Suite 485
One West Court Square
Decatur, Georgia 30030

and in like fashion upon the Attorney for the Appellees, to wit:

Thomas F. Jones
Attorney at Law
1154 Citizens Trust Building
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303

This 12th day of May, 1977.

Carol Atha Cosgrove
CAROL ATHA COSGROVE
Assistant Attorney General

Sworn to and subscribed
before me this 12th day
of May, 1977.

Myra S Davis
NOTARY PUBLIC

Notary Public, Georgia, State at Large
My Commission Expires July 27, 1978

IN THE SUPREME COURT FOR THE UNITED STATES

LEON WEBSTER QUILLOIN,	)	
Appellant,	)	
vs.	)	CASE NO. 76-6372
ARDELL WILLIAMS WALCOTT	)	
and RANDALL WALCOTT,	)	
Appellees.	)	

REPLY BRIEF OF APPELLANT TO APPELLEES' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF AND THE STATE OF GEORGIA AS AMICUS BRIEF IN SUPPORT OF APPELLEES' MOTION TO DISMISS

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Decatur, Georgia 30030
(404) 377-0466
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE UNITED STATES

LEON WEBSTER QUILLOIN, Appellant, vs. ARDELL WILLIAMS WALCOTT and RANDALL WALCOTT, Appellees.	)	CASE NO. 76-6372

REPLY BRIEF OF APPELLANT TO APPELLEES' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF AND THE STATE OF GEORGIA AS AMICUS BRIEF IN SUPPORT OF APPELLEES' MOTION TO DISMISS

The Appellees have filed a Motion to Dismiss and a brief in support thereof and Appellant hereby replies to same. The State of Georgia as Amicus has filed a brief in support of the Appellees' Motion to Dismiss for lack of a substantial federal question and the Appellant will herein reply to said brief.

This was, in fact, a case of first impression in Georgia at the time of the entry of the decision of the Supreme Court of Georgia. However, this case has become the leading case on the issues herein presented and has been applied again to the deprivation of rights guaranteed by the United States Constitution. Attached hereto and incorporated herein as Appendix "A" to this reply brief is the decision of Wojciechowski, et al. vs. Allen, et al., Case No. 32012, 32013, decided by the Supreme Court of the State of Georgia on March 10, 1977. Therefore, until January 1, 1978 this case will deprive all unwed fathers of their rights to their minor children.

It is true as stated at page 4 of the Appellees' brief that this problem will not arise in Georgia after January 1, 1978 when Georgia Laws, 1977, page 201 becomes effective. But can it be rationally argued that a case is not substantial for this Court to rule upon because it involves only the loss of two citizens of the United States of America of their minor children totally and forever? Counsel for the Appellant would argue strongly that the loss of one person's child would warrant the intervention of this Court if this Court feels that that one single person had been denied his rights to due process and equal protection under the Fourteenth Amendment to the Constitution of the United States.

The arguments of the Amicus for affirmation of the Supreme Court of Georgia and the argument of the Appellees are somewhat inconsistent with each other and are internally inconsistent. The Appellees and the Amicus would argue to this Court that the public policy of Georgia is served by denying an unwed father meaningful access to the Courts to file his petition to legitimate the minor child and thereafter object to the adoption. This argument is inconsistent in fact with what the public policy of Georgia will be in that the new adoption act for the State of Georgia, Georgia Laws, 1977, page 201, effective January 1, 1978 commencing at page 13 will give to the putative father of an illegitimate child the rights mandated by this Court in Stanley vs. Illinois, 405 U. S. 645 (1972).

The text of the relevant portion of the new act is as follows:

"(c) When notice is to be given pursuant to subsection (a) or (b) above, it shall

advise the putative father that he loses all rights to the child and will neither receive notice nor be entitled to object to the adoption of the child unless he files (1) a petition to legitimate the child pursuant to Code Section 74-103, and (2) notice of such petition to legitimate with the Court in which the adoption is pending, within thirty (30) days of the receipt of such notice.

(d) If a legitimation petition is not filed by the putative father and notice given as required in subsection (c) within thirty (30) days of his receipt of notice as provided in subsection (a) or (b) above, or if after filing such petition he fails to prosecute it to final judgment, he loses all rights to the child and he may not thereafter object to the adoption and is not entitled to receive notice of the adoption.

(e) If the child is legitimated by the putative father, the adoption shall not be permitted except as provided in Code Sections 74-403 through 405."

The Appellant in this case when he received notice of the filing of the adoption, not in legal form but through the Department of Family and Children Services, immediately contacted an attorney and the attorney filed a Petition to Legitimate said child in accordance with Georgia law and also

filed an objection to the adoption and a Habeas Corpus action. Therefore, the Appellant did everything that he would be required to do under the new act to protect his rights. The problem presented here arose from the fact that the present adoption laws of the State of Georgia did not provide him the due process of the law and equal protection of the law that he could be afforded under the new act. There was a finding of fact by the trial court that the child was not abandoned. Therefore, under the new act, the Appellant would have equal rights with married and divorced fathers; that is the right of absolute veto in such cases.

It is clear to counsel for the Appellant that the legislature for the State of Georgia was of the opinion that the public policy of the State of Georgia would be served by giving putative fathers the right to legitimate their child after the filing of an adoption action. It is also clear to counsel for the Appellant that the Georgia legislature was looking over its shoulder at this Court's ruling in Stanley and the drafting of Georgia Laws, 1977, page 201. The rationale of Stanley has clearly been promulgated into the new adoption statute. The authorities are in conflict on this question, but apparently the weight of authority is to the effect that a reviewing Court should apply the law as it exists at the time of its judgment rather than the law prevailing at the rendition of the judgment under review, and may therefore, reverse a judgment that was correct at the time it was rendered and affirm a judgment that was erroneous at the time where the law has been changed in the meantime and where such application of the law will impair no vested right under the prior law. That such is the accepted rule in this State

is shown by the following decisions. Western Union Telegraph Company vs. Smith, 96 Ga. 569 (23 S.E. 899); City of Valdosta, et al. vs. Singleton, et al., 197 Ga. 194, 208 (28 S.E.2nd 759). It can therefore be argued that in the event that this Court accepts jurisdiction but does not render a judgment in this case until after January 1, 1978, this Court will be required to reverse since Georgia's new adoption statute was not procedurally followed by the trial court or the Supreme Court of Georgia. The Appellees and Amicus may argue that rights have vested under the prior law. However, it is well settled in Georgia that the filing of a Notice of Appeal is supersedeas of the ruling of the trial court. Therefore, no vested rights can be created by this case until this court, as the final court of appeal, enters its judgment and the remittitur is returned to the trial court.

Georgia Code Ann. §6-1002(a):

"(a) Notice of appeal as supersedeas; when bond required - In civil cases, the notice of appeal filed as hereinbefore provided shall serve as supersedeas, upon payment of all costs in the trial court by the appellant, and it shall not be necessary that a supersedeas bond be filed: Provided, however, upon motion by appellee, the trial court shall require that supersedeas bond be given with such surety and in such amount as the court may require, conditioned for the satisfaction of the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal

is dismissed or is found to be frivolous, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, trover, and actions to foreclose mortgages and other security instruments, or when such property is in the custody of the sheriff or other levying officer or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest and damages for delay."

It cannot be argued that the Appellee step-father will lose vested rights in that he would have none absent the completion of this adoption action.

The Georgia statute that is the subject of this litigation (Georgia Laws, 1941, page 200, as amended) is repealed in its entirety by Act No. 85, Georgia Laws, 1977, page 201 (see Appendix "A" to Amicus Brief). Therefore, the public policy of the State of Georgia has changed as argued in Wojciechowski and public policy in Georgia now recognizes that natural fathers do have rights in their children and termination of both rights is required.

CONCLUSION

The precedent created by this case has been disasterously applied already in an Appellate decision in the State of Georgia and will continue to be applied in Appellate decisions in the State of Georgia perhaps with the hope that Appellate decisions will be delayed until after the effective date of the new adoption act, and therefore, the new act will be required to be applied to the factual situation then existing. This type of litigation by technicality of changing laws should not be the deciding factor in this case since one of the oldest of our laws, the Fourteenth Amendment to the United States Constitution, by giving to the Appellant in this case the right to due process of the law and equal protection of the law should be sufficient to protect the Appellant in this case without resort to the legal technicality of the effective dates of new laws. Counsel for the Appellant would again, earnestly request this Court to accept jurisdiction and review the present adoption act of the State of Georgia as it applies to the Appellant in light of Stanley and end once and for all the continuing State by State litigation of the application of Stanley to the adoption setting. Counsel for the Appellant would earnestly beg this Court to

not allow Orsini to become the law of this nation by this Court's acquiescence.

Respectfully submitted this 19th day of May, 1977.

William L. Skinner
WILLIAM L. SKINNER
Attorney for Appellant

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One West Court Square
Decatur, Georgia 30030

(404) 377-0466

CERTIFICATE OF SERVICE

I, WILLIAM L. SKINNER, Attorney of Record for Leon Webster Quilloin, Appellant herein, depose and say that on the 19th day of May, 1977, I mailed an accurate copy of the REPLY BRIEF OF APPELLANT TO APPELLEES' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF AND THE STATE OF GEORGIA AS AMICUS BRIEF IN SUPPORT OF APPELLEES' MOTION TO DISMISS in this case to Appellees' attorney and to the Assistant Attorney General for the State of Georgia by mailing to them by first class mail said document to the following addresses:

Thomas F. Jones
Attorney at Law
1154 Citizens Trust Building
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303

Carol Atha Cosgrove
Staff Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This 19th day of May, 1977.

William L. Skinner
WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

Sworn to and Subscribed
before me this 19
day of May,
1977.

Ronald Lorgins
Notary Public
Notary Public, Georgia, State at Large
My Commission Expires Aug. 31, 1980

Suite 485
One West Court Square
Decatur, Georgia 30030

(404) 377-0466

Sullivan, Asbill and Brennan

426, 526 to 4

In the Supreme Court of Georgia Decided: MAR 16 1977

32012, 32013. WOJCIECHOWSKI et al v. ALLEN et al.

PER CURIAM.

The Allens petitioned to adopt the Wojciechowskis' natural child. The Wojciechowskis objected to the adoption and filed a habeas corpus action to regain the child's custody. The trial court granted the Allens' petition for adoption and denied habeas corpus relief. The Wojciechowskis appeal. We affirm.

On November 18, 1975, Sunny Lynn McEwing, now Wojciechowski gave birth to the child of Ed Wojciechowski. They were not then married. She was asked by Mrs. Elizabeth Brown, a childbirth education instructor attending her, whether she would allow Mrs. Brown's brother and sister-in-law, the Allens, to adopt her baby girl. The next day, Sunny signed a release of the child and, on November 22, 1975, a consent to the adoption. Ed, though present at both times, did not sign a consent, nor was he asked to do so. About six weeks later Sunny executed and filed a retraction of consent and Ed filed a refusal to consent. They were married February 28, 1976.

1. The first enumeration of error raises the question of the constitutionality of Code Ann. § 74-403 (3) which requires only the mother's consent for the adoption of an illegitimate child. We have recently upheld the constitutionality of this section in Quilloin v. Walcott, Ga. (SE2d) (Case No. 31643, decided January 6, 1977), and reaffirm that decision here. The natural father of an illegitimate child has no rights in that child. Therefore, there was no requirement that Ed Wojciechowski consent to the adoption of the child by the Allens.

The Wojciechowskis argue, however, that since Quilloin the public policy of the State has changed with the enactment of Act No. 85 (Ga. L., 1977, pp.), which was signed by the Governor on February 25, 1977. The new Act entirely repealed the present adoption law (Ga. L. 1941, p. 300, as amended) and now recognizes that natural fathers do have rights in their children

and termination of those rights is required. Under City of Valdosta v. Singleton, 197 Ga. 194 (28 SE2d 759) (1944), they invite us to recognize a change in public policy and require Ed Wojciechowski's consent. We note that the effective date of the new Act is January 1, 1978. Thus, the present law is as articulated in Quilloin, and this court is without authority to alter it. The decision of the trial court on this issue must be affirmed.

2. The Wojciechowskis next urge that under California law, the child was not illegitimate. California law must be applied to this determination since the child was born in California and her natural parents resided there. Smith v. Smith, 224 Ga. 442 (162 SE2d 379) (1968); King v. King, 218 Ga. 534 (129 SE2d 147) (1962).

California Civil Code § 230[1], relied upon by the Wojciechowskis, provides: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such . . . into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth . . . ."

[1]The law cited above was repealed effective December 31, 1975. Under the current California law, the natural father's consent would be required. Cal. Civil Code § 7004.

In Truschke v. LaRocca, 46 Cal. Rptr. 601 (1965), the California Supreme Court held that this section required a showing (1) that the father publicly acknowledged the child, (2) that he received it into his home, and (3) that he treated the child as his own legitimate child, and that the code section should be strictly construed.

The natural parents here urge in support of their argument Lavell v. Adoption Institute, 8 Cal. Rptr. 367 (1960), where the father's right to the child was recognized, even though the mother left his home a few days prior to its birth, because the parents had lived in a de facto family status. The trial court in this case, however, found that even though the parents had lived together for over a year prior to the child's birth that the father had never intended to recognize it as a family member because the child's grandparents were not notified of its pending birth and because no preparations had been made at their apartment to receive the child. In the face of conflicting evidence, the trial court's finding of fact must be accepted by this court. Perkins v. Courson, 219 Ga. 611 (135 SE2d 388) (1964). We,

therefore, hold that the child was not legitimated under Cal. Civil Code § 230. Enumeration of error 2 thus does not require a reversal of the judgment.

3. In enumerations of error 3 and 4, the Wojciechowskis challenge the validity of the consent to the adoption by Sunny, the child's mother. They claim the consent was invalid because it was obtained in violation of California law and because it was not freely and voluntarily given. We find that these enumerations also are dependent on fact determinations made adversely to the Wojciechowskis by the trial court, which, though based on conflicting evidence, do not amount to an abuse of discretion by that court and present no grounds for reversal. Perkins v. Courson, supra.

4. The fifth and final enumeration of error raises the question whether the trial court erred in holding that once the consent was executed, the comparative rights of both the natural and adoptive parents must be considered. Since we have already held that the consent of the mother was valid and the consent of the father was not required, the petition of the adoptive parents

was properly granted. The natural parents thus suffered no further harm by this comparison even if this enumeration raises a possible error by the trial court.

The trial court did not err in granting the Allens' petition for adoption and denying the Wojciechowskis' petition for habeas corpus.

Judgment affirmed. All the Justices concur except Undercofler, P.J., Gunter and Ingram, J.J., who dissent.

(6)

426, 526 to 4

32012, 32013. WOJCIECHOWSKI et al. v. ALLEN et al.

UNDERCOFLER, Presiding Justice, dissenting.

I would reverse under my dissent in Quilloin v. Walcott, 238 Ga. (SE2d) (1977). I am authorized to say that Gunter and Ingram, JJ. join in this dissent.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-6372

LEON WEBSTER QUILLOIN,

Appellant,

v.

ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT,

Appellees.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF GEORGIA

BRIEF OF THE APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases:

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INTRODUCTION

Appellant, Leon Webster Quilloin, entered this Appeal to the Supreme Court of the United States on March 11, 1977, and this Court noted probable jurisdiction in this case on May 31, 1977. This Appeal is taken from the highest court of the State of Georgia. It is Appellant's contention here, as in the trial court and the Supreme Court of the State of Georgia, that Appellant has been denied due process of the law and the equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution by

the Statutes of the State of Georgia herein questioned. The application of said Statutes to the Appellant have unconstitutionally left Appellant without standing to object to the adoption of his biological child based merely upon his legal relationship to the mother.

OPINION BELOW

The opinion and judgment of the Supreme Court of the State of Georgia was attached as Appendix "A" to the Jurisdictional Statement and is incorporated in the single Appendix as (App. 81). Said decision is cited in the official publications for the State of Georgia as *Quilloin v. Walcott*, 238 Ga. 230 and in the unofficial report as *Quilloin v. Walcott*, 232 S.E.2d 246.

JURISDICTION

The jurisdiction of this Court is envoked pursuant to 28 U.S.C. §1257(2) on the grounds that this is an appeal from the Supreme Court for the State of Georgia pursuant to Ga. Code Ann. §2-3104 which provides that the Supreme Court for the State of Georgia has exclusive jurisdiction in matters relating to the construction of the United States Constitution and is the court of last resort in the State of Georgia for that purpose. The Supreme Court of the State of Georgia entered a final decision and denied rehearing thereon that upheld the validity of a Statute of the State of Georgia where the validity of said Statutes was questioned on the grounds that said Statutes were repugnant to the Fourteenth Amendment to the Constitution of the United States. The initial decision of the Supreme Court of the State of Georgia was entered on January 6, 1977 (App. 81). Appellant's Motion for Rehearing was denied on January 27, 1977 (App. 88). On February 18, 1977, Appellant filed his Notice of Appeal with the Clerk of

the Supreme Court of the State of Georgia to appeal said decision to the Supreme Court of the United States (App. 95). Therefore, the filing of the Notice of Appeal in the Georgia Supreme Court, which was the court possessed of the record, within ninety (90) days after the entry of said judgment, was timely to envoke the jurisdiction of this Court pursuant to Rule 11 of this Court.

The Appellant entered his appearance and filed his Jurisdictional Statement in this Court on March 11, 1977. Therefore, the docketing of this case was timely to envoke this Court's jurisdiction pursuant to Rule 13 of this Court.

Counsel for all parties conferred as to the contents of the single Appendix pursuant to Rule 36(2) and agreed to its contents. Counsel for the Appellant has filed the single Appendix on or before July 15, 1977, which is within forty-five (45) days of the Order of this Court dated May 31, 1977, noting probable jurisdiction. Therefore, the filing of the single Appendix pursuant to Rule 36 of this Court is timely to envoke this Court's jurisdiction.

Counsel for the Appellant has filed this Brief on the Merits within forty-five (45) days of May 31, 1977, when this Court noted probable jurisdiction in this case, therefore complying with this Court's Rule 41 to envoke the jurisdiction of this Court.

STATUTES INVOLVED

The text of the relevant States involved is as follows: Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Georgia Code (3028):

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

Georgia Laws, 1941, page 300, as amended, Ga. Code Ann. §74-403:

"(1) Except as otherwise specified in the following subsections, no adoption shall be permitted except with the written consent of the living parents of a child. Said consent, when given freely, voluntarily, may not be revoked by the parents as a matter of right. In the case of a child 14 years of age, or over, the consent of such child also shall be required, and must be given in writing in the presence of the court."

"(2) Exemption where child abandoned or parental custody terminated.–Consent of a parent shall not be required where a child has been abandoned by such parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from giving such consent and the court is of the opinion that the adoption is for the best interest of the child, or where such parent has surrendered all of his or her rights to said child to a licensed child-placing agency, or to a court of competent jurisdiction for adoption, or to the Department of Human Resources through its designated agents, or where such a parent has had his or her parental rights terminated by order of a juvenile or other court of competent jurisdiction, or where such parent is dead. Where a decree has been entered by a superior court of this State or any other court of competent jurisdiction of any other State ordering a parent to support a child and such parent has wantonly and willfully failed to comply with the order for a period of 12 months or longer, the consent of such parent shall not be required and the consent of the other parent alone shall suffice in any proceedings for adoption relative to such child."

"(3) Illegitimate children.–If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the Department of Human Resources."

"(4) Guardian.–If the child has a guardian of its person, the consent of such guardian shall be required, or if the child has been surrendered or committed by court order

to a licensed child-placing agency, the consent of such agency shall be required."

"(5) Minor parents.–The parental consent when required by this section, may be given by the natural parents or parent of the child sought to be adopted irrespective of whether such natural parent, or either, or both of them, have arrived at the age of 21 years. The parental consent given by the minor natural parents shall be as binding upon them as if such parents were in all respects sui juris."

Only Section (3) of Ga. Code Ann. §74-403 is in issue.

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment to the United States Constitution:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED BY THIS APPEAL

Do the provisions of Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Georgia Code (3028), and Georgia Laws, 1941, page 300, as amended, Ga. Code Ann. §74-403(3) violate the due process and the equal protection rights of the Appellant guaranteed to the Appellant by the Fourteenth Amendment to the United States Constitution by creating a presumption and classification that distinguishes and burdens all unwed fathers based upon the legal rather than the factual concept of fathers, thereby presuming all

unwed fathers are unfit to have total or partial custody of their minor children without regard to the expression of tangible interest in said child by the biological father, thereby denying all unwed or illegal fathers standing to object to the adoption of their minor biological children while said basic adoption statutes of the State of Georgia give legal (married, divorced, adoptive) fathers the absolute right of veto over any adoption of their minor children so long as they have not abandoned the child?

STATEMENT OF CASE

This action commenced with the birth of Darrell W. Quilloin on the 25th day of December, 1964 (App. 44) [T-43]. Appellant paid the medical bills consequent upon this birth (App. 44) [T-44] and subsequent medical bills for said child because of the child's ongoing illness (App. 51) [T-54]. The legal actions concerning this child commenced with the filing of the original Petition for Adoption wherein the step-father, Randall Walcott, filed his Petition to adopt the minor child, Darrell W. Quilloin, now aged 12. (App. 3). The step-father was married to the Appellee, Ardell Williams Walcott on September 16, 1967 (App. 20) [T-3]. In 1969, Darrell Quilloin came to live with his natural mother and step-father (App. 22) [T-7]. On March 23, 1976, the natural mother, Ardell Walcott, gave her consent to the adoption of her minor child, Darrell W. Quilloin, by her present husband (App. 5). Darrell W. Quilloin was the admitted biological child of Appellee Ardell Williams Walcott and Appellant Leon Webster Quilloin (App. 3). The Appellant was admitted to be the biological father of said child, but was never served with said Petition for Adoption (App. 59) [T-67], but was notified of the filing of said adoption action by the caseworker for the Department of Human Resources (App. 57) [T-65].

The Appellant filed an objection to said adoption as the natural parent of Darrell W. Quilloin (App. 8). Appellant also

filed a Writ of Habeas Corpus in an effort to establish visitation rights to said minor child (App. 10). Appellant also filed a Petition to Legitimate said minor child pursuant to Ga. Code Ann. §74-103 (App. 12). By consent of counsel, all actions were consolidated for trial. Appellant also filed an Amendment to said consolidated action raising the issue of the constitutionality of the application of Georgia Code (3028), Georgia Code of 1933, as amended, Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, to the Appellant in this case (App. 14). Appellant also filed a second amendment raising the issue of the constitutionality of the application of Ga. Code Ann. §74-403(3), Georgia Laws, 1941, page 301, as amended (App. 16). The above-styled action was tried on June 23, 1976, before The Honorable Elmo Holt, Judge of the Superior Court of Fulton County, State of Georgia, and the trial court took said case under advisement and on July 12, 1976, entered an Order wherein the trial court cited under Conclusions of Law: (App. 70)

1.

"The child in question, being illegitimate, the consent of the mother alone to the adoption is sufficient." (Georgia Laws, 1941, as amended, Ga. Code Ann. §74-403(3).

2.

"The biological father, Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the parental power." Ga. Code Ann. §74-203, (App. 72).

Section five of said Order was amended by a subsequent Order on the 21st day of July, 1976, which did not in any manner change the conclusions of law or findings of fact contained in the Order of July 12, 1976 (App. 74). Therefore, the trial court applied said Statutes, which are herein constitutionally questioned, to the Appellant.

The Appellant appealed from said trial court's ruling to the Georgia Supreme Court (App. 75), and filed his Enumeration of Errors committed by the trial court (App. 79).

On January 6, 1977, the majority of the Justices of the Supreme Court of the State of Georgia affirmed the ruling of the trial court (App. 81). By way of explanation of Appendix "A" to the Jurisdictional Statement, Chief Justice Nichols' name is typed among the Justices who dissented; however, from hearsay information derived from the Clerks of the Georgia Supreme Court, Chief Justice Nichols, before the publication of the official decision, struck his name from the dissent and thereby joined the majority that affirmed the ruling of the trial court. Appellant filed a Motion for Rehearing which was denied on January 27, 1977 (App. 88). On rehearing, Justice Ingram joined Justices Undercofler and Gunter in the dissenting opinion. See Appendix "V" to the Jurisdictional Statement (rehearing card). The final result was therefore a four to three vote against the Appellant.

The statutory provisions of the State of Georgia herein questioned were constitutionally questioned in the State Trial Court and the highest Appellate Court for the State of Georgia, reviewed and passed upon adversely to the Appellant, and, therefore, the nature of this case clearly comes under the statutory framework of 28 U.S.C. 1257(2).

SUMMARY OF ARGUMENT

BOTH GA. CODE ANN. §74-203, GEORGIA CODE (3028), AND GEORGIA CODE ANN. §74-403(3), GEORGIA LAWS, 1941, PAGE 300, AS AMENDED, ARE REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN THEIR APPLICATION TO THE APPELLANT UNWED FATHER IN THAT THEY CREATE INVIDIOUS DISCRIMINATION BASED SOLELY UPON HIS MARITAL STATUS TO THE BIOLOGICAL MOTHER WITH NO COMPELLING STATE INTEREST JUSTIFICATION.

Ga. Code Ann. §74-403(1) provides in part that:

> "(1) Except as otherwise specified in the following subsections, no adoption shall be permitted except with the written consent of the living parents of a child."

The Appellant was entitled to the same statutory right of veto over the adoption of his minor child given other parents under Georgia Law for the reason that the challenged Statutes are repugnant to the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution.

It is the contention of the Appellant that all possible arguments for the validity of the challenged Statutes have been eliminated by this Court's ruling in *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed. 551 (1971) which held that a presumption which distinguishes and burdens all unwed fathers was repugnant to the equal protection clause of the Fourteenth Amendment when said presumption extended the right of hearing on a parent's fitness to legal parents, but denied it to unwed fathers. This Court rejected the idea that the State may extend equal protection based upon a legal relationship as opposed to biological relationships.[1] This

[1] To say that the test of equal protection should be the "legal" rather than the biological relationship is to avoid the issue. For the equal protection clause necessarily limits the authority of a State to draw such "legal" lines as it chooses. *Glona v. American Guaranty and Liability Insurance Company*, 391 U.S. 73, 75-76, 88 S.Ct. 1515, 1516, 20 L.Ed.2d 431 (1968), *Stanley* at page 1213 S.Ct.

Court has held that *Stanley's* due process rights stemmed from the biological fact of paternity. This was made clear by the footnote of this Court's decision in *Stanley* which stated:

> "If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearing." *Stanley, supra*, at page 1216 S.Ct. Footnote 9.

It is clearly the public policy of the State of Georgia to afford putative fathers the right to legitimate their children after the filing of an adoption action and thereafter to be afforded the same veto rights as a natural parent.[2]

[2] Georgia Laws, 1977, page 201 (page 13 of Appendix "A" to the Brief of the State of Georgia in support of Appellees Motion to Dismiss.)

"(b) If the identity and location or either of the putative father of an illegitimate or legitimate child is not known or reasonably ascertainable then upon motion by either the petitioner(s), Department of Human Resources, or licensed child-placing agency, the court, as soon as practicable, shall make such inquiry as it deems appropriate under the circumstances and shall determine whether the identity and location of the putative father is ascertainable, and whether the putative father lived with the child, contributed to its support, or has given any other tangible indication of interest in the child, so as to entitle him to notice of the mother's surrender or her consent to the child's adoption by her husband, or the proceedings to terminate. If the court identifies the putative father and determines that he is entitled to notice of the mother's surrender or the proceeding to terminate her parental rights it shall enter an appropriate order designed to afford him such notice. If after inquiry the court is unable to identify the putative father or concludes that he is not entitled to notice of the mother's surrender or her consent to the child's adoption by her husband, or the proceedings to terminate her parental rights, the court shall enter an order terminating the putative father's rights with reference to the child.

(c) When notice is to be given pursuant to subsection (a) or (b) above, it shall advise the putative father that he loses all rights to the child and will neither receive notice nor be entitled to object to the adoption of the child unless he files (1) a petition to legitimate the child pursuant to Code Section 74-103, and (2) notice of such petition to legitimate with the court in which the adoption is pending, within thirty (30) days of receipt of such notice.

(continued)

The Georgia Supreme Court held in *Smith v. Smith*, 224 Ga. 442 (1968), 162 S.E.2d 379, that the father's action of filing a legitimation petition pursuant to Ga. Code Ann. §74-103 after the filing of an adoption action containing the mother's consent was time barred. The Georgia Supreme Court also held in *Hicks, et al. v. Smith, et al.*, 94 Ga. 809 (22 S.E. 153) that:

> "A bastard who has been legitimated by Order of the Superior Court under the provisions of Section 1787 of the Code, by force of that provision of the law may take by dissent from his father only."

Therefore, a Superior Court legitimation of the minor child in this case would only have given that child the right to inherit from the father only, and not for his children to inherit through him from his father, and would also have changed the minor child's name.

However, the Appellant at birth having acknowledged the child in writing, the child had always been known as Darrell Webster Quilloin.

Ga. Code Ann. §88-1709(2) provides:

"If the mother of a child is not married to the natural father at the time of birth, the name of the putative father shall not be entered on the Certificate of Birth without the written consent of the person to be named as father unless a final determination of paternity has been made by the Court having jurisdiction, in which

(footnote continued from preceding page)

(d) If a legitimation petition is not filed by the putative father and notice given as required in subsection (c) within thirty (30) days of his receipt of notice, as provided for in subsection (a) or (b) above, or if after filing such petition, he fails to prosecute it to final judgment he loses all rights to the child and he may not thereafter object to the adoption and is not entitled to receive notice of the adoption.

(e) If the child is legitimated by the putative father, the adoption shall not be permitted except as provided in Code Sections 74-403 through 405."

case the name of the father as determined by the Court shall be entered. Where there is no consent of the putative father, the surname of the child shall be the legal surname of the mother."

Therefore, the Superior Court legitimation procedure, pursuant to Ga. Code Ann. §74-103, in this particular case would have been completely moot in view of this Court's decision in *Trimble v. Gordon*, ____ U.S. ____, 97 S.Ct. 1459, 52 L.Ed. 31 (decided April 26, 1977). In *Trimble, supra*, this Court held that a Statute of the State of Illinois which allowed children born out of wedlock to inherit by intestate succession only from their mother was constitutionally prohibited since the Statute provided that children born in wedlock could inherit by intestate succession from both their mothers and their fathers. Paternity in this case was never an issue due to the fact that the child has always been the recognized child of the Appellant, by the Appellant (App. 44) [T-43], and the biological mother (App. 23) [T-8, 9]. Therefore, the present posture of Georgia Law is that an unwed father is denied standing to object to the adoption of his minor child by his failure to utilize useless, inferior legal procedure, i.e., *Trimble, supra* allows inheritance through the father not merely from the father.

There is no longer any compelling State interest for the existence of the challenged Statutes since the public policy of the State of Georiga, as shown by the Acts of its legislators, clearly intends to give unwed fathers legal parent standing upon a showing of tangible interest. See Appendix "A" to the Brief of the State of Georgia in support of Appellees Motion to Dismiss, page 14, Georgia Laws, 1977, page 201.

Under this Court's mandate in *Stanley, supra*, and the application of this Court's criterion of "strict scrutiny with teeth" as applied in *Trimble, supra*, the Appellant had standing to object to the adoption of his minor child and was not time barred from doing so and, absent a showing of unfitness, should have been given at least minimal custody in the form of visitation privileges with said child.

ARGUMENT

I.

BOTH GA. CODE ANN. §74-203, GEORGIA CODE (3028), AND GEORGIA CODE ANN. §74-403(3), GEORGIA LAWS, 1941, PAGE 300, AS AMENDED, ARE REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN THEIR APPLICATION TO THE APPELLANT UNWED FATHER IN THAT THEY CREATE INVIDIOUS DISCRIMINATION BASED SOLELY UPON HIS MARITAL STATUS TO THE BIOLOGICAL MOTHER WITH NO COMPELLING STATE INTEREST JUSTIFICATION.

This Court has held in *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed. 551 (1971) that a presumption that distinguishes and burdens all unwed fathers was repugnant to the equal protection clause of the Fourteenth Amendment when said presumption extended the right of hearing on a parents fitness to legal parents but denied it to unwed fathers. The adoption laws for the State of Georgia will become consistent with this Court's mandate in *Stanley, supra* effective January 1, 1978. The public policy of the State of Georgia, as shown by the acts of its legislators, clearly intends to give unwed fathers legal parent standing upon a showing of tangible interest. (See Footnote 1 (e)). The challenged present Statutes that were applied to the Appellant in this case are constitutionally void by reason of the creation of a classification that equals invidious discrimination being applied to the Appellant merely because he failed to marry the mother of his biological child. It should be noted here that there is nothing in the record to indicate that the biological mother would have married the Appellant. The new Statute gives to the father of an illegitimate child the procedural and substantive rights dictated by *Stanley, supra* and by *Glona v. American Guaranty and Liability Insurance Company*, 391

U.S. 73, 75-76, 88 S.Ct. 1515, 20 L.Ed.2d 431 (1968) which held:

> "To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the equal protection clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses."

Appellees may argue that the public policy of the State of Georgia, as shown by the acts of its legislature, has not changed during the pendency of this litigation since the new adoption act is not to be effective until January 1, 1978. However, said act repealed Georgia's entire adoption laws, which, of course, included the challenged Statutes, and this specific repealer was passed January 17, 1977, by the Senate, February 8, 1977, by the House, and approved by the Governor on February 25, 1977. (See Appendix "A" to the State of Georgia's Brief in support of Appellee's Motion to Dismiss.) The peers of the Appellant and Appellees elected the Georgia Legislature, who should be responsive to their will, and it should not be assumed that the mere postponement of the effective date of the Act indicated that our present legislators thought that the new Act would be good law on its effective date, but bad law at this time. The only rational assumption for the reason why the effective date of the Act was postponed would be the fact that the Act does comprehensively revise the old adoption Statute and change the procedure relating thereto and, therefore, it was necessary for the Department of Human Resources, adoption agencies, lawyers, and judges to study the Act so that they could procedurally respond.

A rational assumption should be that the legislature for the State of Georgia was of the opinion that the public policy of the State of Georgia would be served by giving putative fathers the right to legitimate their children *after the filing of an adoption* and thereafter be benefited by the preferential position of a legal parent in any custody proceeding affecting their minor children. The Georgia legislature clearly looked to

this Court's interpretation of the due process and equal protection clause in *Stanley, supra* in drafting Georgia Laws, 1977, page 201. The constitutional rationale of *Stanley* was clearly promulgated into the new adoption statute. If this case is not decided by this Court, adversely to the Appellant, prior to January 1, 1978, it is the opinion of counsel for the Appellant that the expression of the public policy of this State, as set forth in the new adoption act, will have to be applied for the benefit of the Appellant. The weight of authority in Georgia is to the effect that a reviewing court should apply the law as it exists at the time of its judgment rather than the law prevailing at the rendition of the judgment under review, and may therefore reverse a judgment that was correct at the time it was rendered and affirm a judgment that was erroneous at the time where the law has been changed in the meantime and where such application of the law will impair no vested right under the prior law. *Western Union Telegraph Company v. Smith*, 96 Ga. 569 (23 S.E. 899); *City of Valdosta, et al. v. Singleton, et al.*, 197 Ga. 194, 208 (38 S.E.2d 759). Under the authority of Ga. Code Ann. §6-1002(a), filing of the Notice of Appeal was supersedeas. The Order of the trial court approving the adoption is not yet effective. Randall Walcott, the step-parent of Darrell Quilloin, has no vested rights in Darrell Quilloin at this time and cannot be legally harmed.

Ga. Code Ann. §6-1002(a):

> "In civil cases, the notice of appeal filed as hereinbefore provided, shall serve as supersedeas. . . ."

However, Appellant would urge this Court to strike down said Statutes as they were applied to the Appellant in that Appellant cannot be totally sure of the actions of the Supreme Court of the State of Georgia on remittitur in view of the fact that the new adoption statute does not give initial preferential rights to the biological father. (See Footnote 2(b)).

There was never any contention by any of the parties to this case that the minor child was a deprived or delinquent

child. On the contrary, everyone has agreed that Darrell Quilloin has been generally well cared for and not abandoned. (App. 32) [T-24]. Therefore, the jurisdiction of the Georgia Juvenile Courts could never be applied to Darrell since Darrell was never a delinquent, unruly, or deprived child.[3]

Therefore, the Juvenile Code cannot be applied to this case. However, as an illustration of this State's public policy, though it fails to go far enough by affording unwed fathers preferential substantive rights,[4] the fairly new Juvenile Court Statute for the State of Georgia does allow the putative father

[3]Ga. Code Ann. §24A-301, Jurisdiction over juveniles.

(a) The court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action:
(1) Concerning any child;
(A) who is alleged to be delinquent except when the allegation is based on a delinquent act which would be considered a crime if tried in a superior court and for which the child may be punished by loss of life or confinement for life in the penitentiary;
(B) who is alleged to be unruly;
(C) who is alleged to be deprived;
(D) who is alleged to be in need of treatment or commitment as a mentally ill or mentally retarded child;
(E) or who is alleged to have committed a juvenile traffic offense in section 24A-3101.

[4]Ga. Code Ann. §24A-3202, Proceeding for termination of parental rights.

(b) If the paternity of a child born out of wedlock has been established in a judicial proceeding to which the father was a party prior to the filing of the petition the father shall be served with summons as provided by this Code [Title 24A]. He has the right to be heard unless he has relinquished all paternal rights with reference to the child. The putative father of the child whose paternity has not been so established, upon proof of his paternity of the child, may appear in the proceedings and be heard. In either event nothing in this section shall be construed to preclude the father's petitioning for custody of the child. At the time of said hearing, upon proof of paternity being shown to the court, the father shall be allowed to petition for custody of the child and the court shall grant same, if such shall be in the best interest of the child. He is not entitled to notice of hearing on the petition unless he has custody of the child. (Acts 1971, pp. 709, 747.)

to petition for custody of the child. However, this Statute is also inconsistent with the basic rights afforded legal parents[5] in that legal parents must be shown to be unfit before their children can be awarded to a third party.

It cannot be refuted that divorce is prevalent in our society. It has been reported from some sources that there are now approximately 49 divorces for every 100 new marriages. Children are the product of many of these abortive relationships. No one argues that the fathers of these children should be denied the parent-child relationship. Georgia, like many other States, no longer condemns divorce, but has passed a no-fault divorce law.[6] The Appellant in this case should be considered a de facto divorced father in that he stands in basically the same relationship to the child as a divorced father who has been given visitation rights with the child. In this case the Appellant was allowed to have visitation with the child and have the child visit with him in the past (App. 46) [T-46]. If the mother had so desired, she could have filed a support petition in the Superior Court which

[5]*Patman v. Patman*, 231 Ga. 657, 203 S.E.2d 486,

[1] Under the law of this State, there are basically two ways by which custody of a minor child may be taken from his natural parent or parents. The first is pursuant to Code, §74-108 which lists six different ways a natural parent may forfeit his or her right to the custody of his or her child. The approved stipulation in the record in this case does not substantiate forfeiture under Code, §74-108.

A Second way of depriving a natural parent of the custody of his child is upon a clear and satisfactory showing that the parent is an unfit person to have such custody. See *Perkins v. Courson*, 219 Ga. 611, 135 S.E.2d 388. The approved stipulation in the record in this case does not show that the natural mother is an unfit person to have custody of her child.

[2] Having reviewed this record, we do not find any evidence that would warrant the judgment by the trial judge awarding permanent custody of this minor child to a third party.

Judgment reversed.

[6]Ga. Code Ann. §30-102(13), The marriage is irretrievably broken.

would have given her exactly the same benefits that are afforded as ancillary relief in divorce cases.[7] The Appellee, biological mother, did not desire this support, but only desired to be rid of the Appellant which is a fairly common desire of ex-wives who have remarried. The only reason truly given in the transcript of this case as to why the Appellees wanted to be rid of the Appellant was because it disrupted their family life with their present family, and that the giving of gifts to Darrell by the Appellant created an over balance of gifts that were detrimental to the seven-year-old child born to the biological mother and the step-parent, Appellee (App. 35) [T-28, 29]. The minor child testified that he recognized Mrs. Mable Dawson, the mother of the Appellant, as his grandmother (App. 68) [T-82], and the Appellant as his real father (App. 67) [T-81]. The minor child testified both that he did not oppose the adoption and that he remembered being with the Appellant, and if it was left to him, that he would like to see the Appellant sometimes (App. 68) [T-82].

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[7] *Simmons v. Chambliss*, 128 Ga. App. 218 (196 S.E.2d 183):

> [1] The defendant's motion to dismiss the petition for failure to "state a cause of action," is without merit. The petition alleged the petitioner's maternity, the defendant's paternity, the children's minority, the defendant's continuous failure to provide adequate support for said children and sought a court order for temporary and permanent support. This is sufficient.
>
> [2, 3] The defendant did not elect to include a transcript of record for his appeal. Hence, we are bound to assume that the trial judge's findings are supported by competent evidence. This being the case, the only issue presented is the legal sufficiency of the trial court's judgment. "The father of an illegitimate child shall be bound to maintain him until said child reaches the age of 18, marries or becomes self-supporting, whichever occurs first." Code Ann. §74-202 (Ga.L. 1972, pp. 494, 495). Upon a determination of the defendant's paternity of the children, this law requires that this duty be performed.
>
> The court order the defendant to pay child support bi-monthly "until said children arrive at the age of eighteen years, marry, die or become self-supporting, whichever shall occur first."
>
> Judgment affirmed.

The Appellant testified at length in his direct testimony from (App. 44) [T-44] to (App. 53) [T-57] how he had loved and cared for the child, including the procurement of food, clothing and medical care for said child, and sending child to kindergarten and actually taking him most of the time. In what manner does this factual situation differ from the many cases of short-lived marriages and divorce? It is the contention of the Appellant that a Statute may not be drawn to define a father as legal rather than biological. The equal protection clause necessarily limits the authority of a State to draw such "legal lines" as it chooses. *Glona v. American Guaranty and Liability Insurance Company, supra.*

The interest of the Appellant in this case is particularly important in view of the fact that the minor child in question may decide, upon reaching age 14, that he wishes to live with the Appellant. If this should occur, then it will be mandatory upon the trial court to change the custody of said child to Appellant absent a showing that the Appellant is not a fit and proper person to have the custody of said child.[8] There is

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[8] Ga. Code Ann. §74-107, Custody of minor children, discretion of court as to:

> In all cases where the custody of any minor child or children is involved between the parents, there shall be no prima facie right to the custody of such child or children in the father, but the court hearing such issue of custody may in exercise of its sound discretion, taking into consideration all the circumstances of the case, including the improvement of the health of the party seeking a change in custody provision, as to whose custody such child or children shall be awarded, the duty of the court being in all such cases in exercising such discretion to look to and determine solely what is for the best interest of the child or children, and what will best promote their welfare and happiness, and make award accordingly. In all such cases and in cases where a change in custody is sought, where the child has reached the age of fourteen years, such child shall have the right to select the parent with whom such child desires to live and such selection shall be controlling unless the parent so selected is determined not to be a fit and proper person to have the custody of said child.
>
> This rule applies even if both parents qualify to have the child.
> *Peacock v. Adams*, 230 Ga. 774 (199 S.E.2d 254).

absolutely no evidence in this record to indicate that the Appellant would be unfit to have partial custody or full live-in custody in the event that upon the child reaching the age of 14 he elects the Appellant as his custodian.

The Appellant should not be mistaken to be questioning the fitness of the Appellees. This is not done. The Appellant admitted during the trial court hearing that he felt that the minor child should be with the mother the major portion of the child's time (App. 57) [T-64]. How does this differ greatly from the position of the majority of divorced fathers who feel that the mother is the better parent between the parents to have the custody of children of tender years, but nevertheless, said fathers desire the society of their children by visitation rights? There is no rationale compelling State interest or public policy that would authorize the treatment of an unwed father differently from a divorced father. After all, are they not both unwed fathers insofar as it relates to their matrimonial status with the biological mother?

The Appellees and the State of Georgia may argue that the decision by this Court to treat unwed fathers with the same legal dignity of legal or divorced fathers will cause impediments in the placing of born and unborn children for adoption. This impediment should be no greater, however, than the impediment that is created when the parties marry, live together a short while and immediately separate after the conception of a child. Therefore, the pre- or post-birth status of the child should be indistinguishable insofar as it relates to the father's legal rights.

Appellees and the State of Georgia may argue that the service upon putative fathers to terminate their parental rights will create major impediments in the adoptive placement of minor children. However, it has been previously shown herein that Ga. Code Ann. §24A-3202 provides that if the paternity of a child born out of wedlock has been established in a judicial proceeding to which the father was a party prior to the filing of the petition, the father must be served with summons in the case. In construing Ga. Code Ann.

§24A-3204(a), the Georgia Court of Appeals held that constructive notice, i.e., service by publication as provided under Ga. Code Ann. §24A-1702(b) was sufficient to bestow jurisdiction over the putative fathers in each case under the authority of *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, *In the interest of J. B., In the interest of A.D.S.*, 140 Ga. App. 668, 231 S.E.2d 821, decided (November 19, 1976.)

In this particular case the only service received by the Appellant was quasi constructive notice by a phone call from the Department of Human Resources (App. 58). [T-66]. This service was sufficient for the Appellant in this case to file his objections. The Appellant does, however, take violent exception to any argument that he has been afforded a due process hearing which would be a legal and factual absurdity in this case since the trial court found as a matter of law that he had no standing in this case (App. 72).

A. Post Stanley Decisions By This Court Clearly Indicate That The Stanley Custody Rationale Must Be Applied To The Adoption Setting.

The Appellees may argue that this Court did not intend to give substantive custody rights by its ruling in *Stanley, supra.* This argument is quickly refuted by this Court's ruling in *Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan*, 405 U.S. 1051 (April 17, 1972), and *Vanderlaan v. Vanderlaan*, 405 U.S. 1051 (April 17, 1972). In *Vanderlaan, supra* the Appellate Court of Illinois in *Vanderlaan v. Vanderlaan*, 126 Ill. App.2d 410 (262 N.E.2d 717) reversed a trial court's award of custody to the father of the subject children on the grounds that the children were born out of wedlock.[9] This Court summarily reversed and held the

[9] Section 13 clearly embodies a legislative determination that a putative father should have no right to the society of his illegitimate child. *Wallace v. Wallace*, 60 Ill. App.2d 300, (210 N.E.2d 4). A contrary construction of the Statute cannot be justified. Plaintiff's

(continued)

Stanley rationale must be applied. *Vanderlaan, supra* was not an adoption case, but a case involving actual custody of minor children by a putative father.

The Oregon Adoption Statute, O.R.S. 109.326(1) which is substantially identical to Georgia's Adoption Statute, permitted the adoption of a child born out of wedlock upon the consent of the natural mother, without notice to, or the consent of, the natural father. In *Miller v. Miller*, 504 F.2d 1067 (1974), the United States Court of Appeals for the 9th Circuit declared that the application of the Statute would infringe upon the Federal Constitutional rights of the Appellant and all natural fathers similarly situated. The Solicitor General of the State of Oregon in oral argument in *Miller, supra* conceded, in effect, that the State Statute in question was out of harmony with the Federal Constitution. A similar concession in this case by the Attorney General for the State of Georgia would be warmly received by the Appellant.

The Congress of the United States, in looking to the best interest of minor children, has accepted acknowledgment of a minor child as criterion for the receipt by said minor child of Social Security Benefits from biological fathers' accounts and amended the Social Security Act by the terms of Section 216(h)(2) to allow a recognized child to draw from the account of his biological father.[10]

(footnote continued from preceding page)

Complaint in this case prayed that he be granted custody or visitation rights as to Donna. By Statute, he was not permitted to have either. Consequently, the Complaint should have been dismissed for want of equity in the trial court on Defendant's Motion.

We must abide by the legislative determination that a putative father should have no rights to the society of his children born out of wedlock. (***DePhillips v. DePhillips, supra.***)

. . . Section 13 of the Bastardy Act, as amended, prohibits not only the granting of custody, but also the granting of "control" to a putative father (and thereby prohibits visitation rights to a parent). (Emphasis supplied.)

[10] Section 216(h)(2) of the Social Security Act . . . (1) have acknowledged in writing that the Applicant is his son or daughter."

This Court was called upon to construe a section of the Social Security Act in light of due process and equal protection in *Califano v. Goldfarb*, ____ U.S. ____, 97 S.Ct. 1021 (1977), 51 L.Ed. 270 decided March 2, 1977. This Court in *Califano, supra* held that gender-based distinctions under the Social Security Act are repugnant to the Federal Constitution. The challenged Georgia Statutes are also gender-based distinctions and for the reasons stated in *Califano, supra* are out of touch with the equal protection clause of the Fourteenth Amendment.

CONCLUSION

The Appellant in this case clearly passes the tangible interest criterion of the new Georgia Adoption Statute and does not deserve to be punished by the misconduct of other unwed fathers.

For the foregoing reasons, the decision of the Supreme Court of Georgia should be reversed and the criterion of *Stanley* and *Vanderlaan* applied for the benefit of the Appellant.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 76-6372

LEON WEBSTER QUILLOIN,

Appellant,

v.

ARDELL WILLIAMS WALCOTT
and RANDALL WALCOTT,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF GEORGIA

BRIEF OF APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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STATEMENT

This action was commenced by the filing of a Petition for Adoption by Appellee RANDALL WALCOTT to adopt the minor child of his wife, Appellee ARDELL WALCOTT (A. 3). The child involved is DARRELL W. QUILLOIN, who was a male child born December 25, 1964 and is now twelve (12) years of age (A. 23). Darrell is the illegitimate child of Appellee ARDELL WILLIAMS WALCOTT and Appellant LEON WEBSTER QUILLOIN (A. 23). The above said mother and father have never been married to each other (A. 23).

Appellant filed an objection to this adoption and also filed

an application for a Writ of Habeas Corpus for the purpose of establishing visitation rights to the minor child (A. 8, A. 10). In addition, Appellant also filed a petition to legitimate the minor child pursuant to Ga. Code Ann. §74-103 (A. 12).

On June 23, 1976, Appellee RANDALL WALCOTT's petition for adoption as well as Appellant's objection to said adoption, application for a Writ of Habeas Corpus and petition for legitimation were tried before the Honorable Elmo Holt, Judge of the Superior Court of Fulton County, State of Georgia (A. 20).

Elmo Holt, Judge of the Superior Court of Fulton County, State of Georgia (A. 20).

Judge Holt took the case under advisement until July 21, 1976, at which time the Court entered a final order of adoption in favor of Appellee RANDALL WALCOTT, changing the child's name to DARRELL WEBSTER WALCOTT (A. 70). In the same Order, the Court ordered that Appellant's petition for legitimation, application for Writ of Habeas Corpus establishing visitation rights and objection to the adoption be denied (A. 72).

At the time this Order was entered, Judge Holt made the following findings of fact:

(1) Darrell W. Quilloin, a male, minor child, born December 25, 1964, now eleven (11) years of age; is an illegitimate child of Ardell Williams Walcott (mother) and Leon Webster Quilloin (father). The said mother and father are not and never have been married.

(2) The mother has had possession and custody of said child and the child has lived solely or principally with the mother of maternal grandparents all of the child's life, although the child has visited with the father and the paternal grandparents on many occasions.

(3) The father has provided support for the child irregularly, in the form of medical, food, clothing, gifts and toys from time to time.

(4) The principal or primary source of support, on a regular basis, has been the mother or the maternal grandparents.

(5) Overall, the child has been well cared for and has

never been in an abandoned or deprived condition.

(6) The mother is now married to Randall Walcott and has been so married since September 16, 1967, and there is a seven year old child as a result of that marriage.

(7) The mother has recently declined to allow visitation by the father and has declined to accept support by way of toys, gifts, etc., for the child because of disruption of the family and disparity in the treatment of this child and the seven year old half-brother in the home, which causes problems within the family.

(8) The step-father of the child, Randall Walcott (the mother's husband), filed his petition for adoption of the child on March 24, 1976, and the mother consented to such adoption in writing, same being attached to said petition.

(9) The child, though only eleven years of age, expresses his desire to be adopted by the step-father, Randall Walcott, to change his name to Walcott, as well as his desire to continue to visit the biological father, Leon Webster Quilloin, on occasions.

(10) The biological father made no effort to legitimate the child and filed no petition for legitimation until after the aforesaid petition for adoption was filed by Randall Walcott.

(11) The biological father made no effort to obtain regular visitation rights and filed no Habeas Corpus action to establish visitation privileges until after the aforesaid petition for adoption was filed by Randall Walcott.

(12) The biological father is a single man; he is not seeking custody of the child; he objects to the adoption by Randall Walcott and he seeks visitation rights.

(13) The mother objects to the granting of the legitimation and she objects to visitation rights by the biological father.

(14) The proposed adoptive father, Randall Walcott, is a fit and proper person to adopt the child.

(15) The proposed adoption of the child by Randall Walcott is in the best interests of said child.

(16) The proposed legitimation of the child by Leon Webster Quilloin is not in the best interests of the child

at this late date, nor is the granting of the Habeas Corpus relief seeking visitation rights in the best interests of the child, and both should be denied. (A. 71, 72, 73).

On July 21, 1976, Appellant filed his Notice of Appeal of the trial court's ruling to the Supreme Court of Georgia (A. 75). In an opinion decided January 6, 1977, the Supreme Court of Georgia affirmed the trial court's determination in this matter. Appellant made a motion for rehearing to the Supreme Court of Georgia and this motion was denied on January 27, 1977 (A. 88).

Darrell was born December 25, 1964 in Savannah, Georgia (A. 23). The biological parents of the child were Appellee ARDELL WILLIAMS WALCOTT and Appellant LEON QUILLOIN (A. 23). Mrs. Walcott and Mr. Quilloin were not married at the time of Darrell's birth or at any other time (A. 23).

From the time of Darrell's birth, Appellant has never supported him on a regular basis (A. 23). Although Appellant has made irregular contributions of food, medical care, and small amounts of money, the primary support of Darrell was provided by his mother who worked in New York after the child was born (A. 40, A. 53). During this time, Darrell lived with his maternal grandmother who also provided significant amounts of support (A. 40, A. 59). Appellant did provide some medical care for the child during the early part of his life but the last time any medical care was provided by Appellant was when the child was three (3) years old (A. 37).

During the child's early life, Appellant visited the child on an irregular basis (A. 40). However, these visits were infrequent and never lasted more than a week at a time (A. 60).

During the period of time these visits occurred, Appellant owned a nightclub and was in the "whiskey business" (A. 55). Even though this was the case and Appellant kept irregular hours, he made a point of carrying Darrell with him wherever he went (A. 54). Appellant provided a nursery for Darrell in his nightclub so that the child could be with him at all times

(A. 46). During this period of time, Appellant did not feel that this situation was harmful for the child because "it was just our way of life" (A. 54, 55). During these visits, if Appellant was too busy to care for Darrell himself, he arranged for his friends or business associates to care for the child (A. 46).

On September 16, 1967, Appellee ARDELL WILLIAMS WALCOTT married Appellee RANDALL L. WALCOTT (A. 20). Darrell has lived with his mother and step-father since 1969 (A. 21). There is also a seven (7) year old male child as a result of the marriage between Appellees (A. 35).

From the time of Darrell's birth, until the filing of the petition for adoption in this case, Appellant has never attempted to legitimate the minor child or obtain visitation rights through court proceedings (A. 24, A. 25). At the hearing held in this matter, Appellant stated that he did not feel this action was necessary and did not desire to have a judicial determination on the rights of all parties involved (A. 58). Appellant also stated that he had no objection to the present home environment of the minor child and did not desire custody of the child (A. 57).

At this same hearing, Appellee ARDELL WALCOTT stated that it was her opinion that the adoption was in the best interest of the child as well as all other members of the family (A. 31, A 35). She stated that she felt that the normal family life was disrupted on occasions when Darrell visited Appellant and that the material things offered to Darrell by Appellant were not in his best interest (A. 35).

At the hearing, Darrell himself stated that he desired to be adopted by Appellee RANDALL WALCOTT and that he wanted his name changed from Quilloin to Walcott (A. 67).

SUMMARY OF ARGUMENT

I.

The decision of the Georgia Supreme Court in applying Ga. Code Ann. §74-203, and Ga. Code Ann. § 74-403(3) are not violative of the due process of law requirement in view of the entire statutory scheme which allowed Appellant adequate opportunity to protect his parental rights. Ga. Code Ann. §74-103 provides that a father of a illegitimate child may render the same legitimate by petitioning the Superior Court of the county of his residence.

After this petition is granted, the putative father is given all the rights and responsibilities of any other parent and his child could not be adopted without his permission. Since Appellant has never attempted to legitimate the minor child, he should not now be heard to argue that the decision of the Supreme Court of Georgia deprives him of his rights in the minor child when he failed to take the necessary steps to avail himself of these rights.

II.

The decision of the Supreme Court of Georgia does not violate the requirement for equal protection because this decision established a valid category by separating fathers who have not acknowledged paternity of a minor child from those who have married the minor child's mother or legitimated the child. The equal protection clause does not require that all persons be treated equally in all situations and legislation may place special burdens upon defined classes in order to achieve permissible ends. One class of individuals or entities can be treated differently from others without violating the requirement for equal protection as long as the difference is not invidious discrimination and relates to a legitimate state interest.

In this case, the State has a legitimate concern for the well being of its children and the stability of the family unit. In the case of an illegitimate child, there is frequently no father to raise the child and the mother must bear the entire responsibility. In such a situation, it is reasonable for the State to place full responsibility for the child with the parent who is present and has been responsible for the child's upbringing. By failing to legitimate the child, the father has shown a lack of interest in the child and the requirement of his consent before the child can be adopted would raise the very real danger of profit seeking by a father in order to secure his consent to an adoption of the minor child.

III.

Appellant should not be given the right to object to Appellee's petition for adoption in view of his lack of interest in the minor child prior to this time. This lack of interest was expressed by Appellant's failure to support the minor child as required by law, and also by his failure to express his interest in other ways such as regular visits. Assuming arguendo that some putative fathers deserve consideration in situations such as this, Appellant does not in view of this lack of interest.

While considering the rights of Appellant in this situation, this Court should also consider the rights of all the other persons involved, primarily the child himself. Darrell has stated very definitely that he desires to be adopted and to be free of the stigma which results from having a different last name from the remaining members of his family. Also, this Court should consider the rights of both Appellees who have provided both financial and emotional support for the child for the last eight (8) years.

IV.

Even though the Georgia legislature has passed a new adoption statute which becomes effective on January 1, 1978, this Court should not apply this new statute to this case but should apply the law that existed at the time of the lower court's decision. The old statutory scheme promulgated by the legislature of Georgia afforded Appellant sufficient protection for his due process and equal protection rights.

Generally, this Court applies the law in effect at the time it renders its decision but an exception to this general rule is made where necessary to prevent manifest injustice. Such an injustice would occur in this case since the new adoption statute would give Appellant a virtual veto power over Appellee's petition which was filed 21 months before the new adoption statute becomes effective.

ARGUMENT

I.

THE DECISION OF THE SUPREME COURT OF GEORGIA DENYING APPELLANT THE RIGHT TO OBJECT TO THE ADOPTION OF HIS ILLEGITIMATE CHILD DOES NOT VIOLATE THE DUE PROCESS REQUIREMENT OF THE FOURTEENTH AMENDMENT BECAUSE APPELLANT HAD ADEQUATE OPPORTUNITY TO LEGITIMATE THE MINOR CHILD PRIOR TO APPELLEE'S PETITION FOR ADOPTION.

In his brief, Appellant contends that the applicable Georgia statutes in this case as applied to him constitute violations of the due process clause of the Constitution of the United States and that this conclusion is based on the case of *Stanley v. Illinois*, 405 U.S. 645 (1971), [hereinafter cited *Stanley*]. In that case, this Court held that where the natural mother of illegitimate children was dead, the biological father of these

children was entitled to a hearing before custody of the children could be given to the State. This Court based its decision on the fact that the due process clause required a hearing before the father's children could be taken from him and the denial of this hearing was a violation of equal protection.

Appellees submit that *Stanley* is inapplicable here because it can be distinguished on a number of very important factual grounds. First, unlike *Stanley*, the mother in the instant case is alive and is living with the child, along with her husband who is the original petitioner for adoption in this case. Secondly, *Stanley* involved a contest between the biological father of illegitimate children and the State. This case involves a contest between the biological father of an illegitimate child and the stepfather with whom he has been living. In the instant case, the child will remain in the normal family environment that he has become accustomed to, whereas in the *Stanley* situation, the children would be placed in a State institution or a foster home.

Perhaps the most important factual distinction between the instant case and *Stanley* is that, in *Stanley*, the father, mother, and children had lived together as a family prior to the mother's death. *Id.* at 646. This Court felt that this was an extremely important factor since the father was living with the children at the time of the mother's death. *Id.* n.4 at 650. This situation is obviously different from the instant case where Appellant has never lived with the minor child on a regular basis.

The most important factor which takes this case out of the *Stanley* situation is the existence of a Georgia statute by which a father can legitimate his illegitimate minor child. It should be noted at this point that Illinois did not have such a legitimation statute at the time of *Stanley*.[1]

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[1] Illinois does have a statute which deals with the legitimation of illegitimate children after the parents have entered into a ceremonial marriage. See Ill. Rev. Stat. c.89 §17A.

Ga. Code Ann. §74-103 provides:

> "A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, setting forth the name, age, and sex of such child, and also the name of the mother; and if he desires the name changed, stating the new name, and praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child to be legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known."

Appellee submits that this statute satisfies whatever due process right Appellant has in this case and that this requirement is not violated if the father does not choose to utilize the procedure set forth in the above code section.

In his brief, Appellant implies that he should not be punished for taking legal action which was totally unnecessary in the first place. See Appellant's Brief, pgs 11-12. This argument is untenable since that legal action would have availed Appellant of the very rights that he claims to be deprived of. The instant case presents the situation where an individual has slept on the rights given him by law, rather than being denied these rights as Appellant contends.

In this case, it is undisputed that Appellant never attempted to legitimate the minor child prior to the filing of Appellee RANDALL WALCOTT's petition for adoption (A. 24, A. 58). Appellant has never attempted to obtain visitation rights to the minor child prior to this petition (A. 24, A. 58). He should not now be heard to argue that the decision of the Supreme Court of Georgia deprives him of the rights in the minor child when he failed to take the necessary steps to avail himself of these same rights.

At the hearing held in this matter, Appellant stated that he did not feel it was necessary to legitimate the child or seek to obtain visitation rights (A. 58). Appellant stated that the situation was satisfactory and implied that he did not want

any interference by the courts (A. 58).

It is obvious that the statutes above mentioned to not violate the due process clause of the United States Constitution. The Federal and State requirements of due process are satisfied if one is given notice and an opportunity for a hearing before he is deprived of life, liberty, or property. However, even the Court in *Stanley* acknowledged that due process of law does not require a hearing in every conceivable impairment of a private interest. *Id.* at 650; *Cafeteria Restaurant Worker's Union, etc., v. McElroy,* 367 U.S. 886 (1967).

Appellees submit that any due process requirement which does exist in this situation is satisfied by the existence of the above mentioned legitimation statute. Appellant argues that the only effective due process in this situation is by allowing him to object in the adoption action. However, Georgia is not under any obligation to satisfy Appellant's asserted right to due process at that stage and the statutory scheme which requires him to assert his rights prior to that time is permissible.

This Court has held that vindication of constitutional rights under the due process clause does not demand uniformity of procedure by all the States, but each State is free to devise its own way of securing essential justice. *Hysler v. Florida,* 315 U.S. 411 (1942). This Court has also held that the Fourteenth Amendment does not give Federal Courts the power to impose upon the States their views of a wise economic or social policy. *Dandridge v. Williams,* 397 U.S. 471 (1970).

II.

THE DECISION OF THE SUPREME COURT OF GEORGIA DENYING APPELLANT THE RIGHT TO OBJECT TO THE ADOPTION OF HIS ILLEGITIMATE CHILD DOES NOT VIOLATE THE EQUAL PROTECTION REQUIREMENT OF THE FOURTEENTH AMENDMENT BECAUSE THE

STATE HAS A LEGITIMATE INTEREST IN THE WELL BEING OF ITS CHILDREN AND THE STABILITY OF THE FAMILY UNIT.

Appellant makes the argument that Ga. Code Ann. §74-203 and §74-403(3) violate the requirements of equal protection because they classify all unwed fathers as unfit parents. However, this is not the case. These laws establish a valid category by separating fathers who have not accepted responsibility for paternity of a minor child from those who have legitimated the child or married the child's mother.

The equal protection clause of the Fourteenth Amendment requires that all persons shall be treated alike under like circumstances and conditions. However, it is not a demand that the statute involved necessarily apply equally to all persons and does not require that things which are different in fact to be treated in law as though they were the same; hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. *Rinaldi v. Yager*, 384 U.S. 305 (1966). Equal protection does not mean that a State may not draw lines to treat one class of individuals or entities different from the others; the test is whether the difference in treatment is invidious discrimination. *Lehnhausen v. Lakeshore Auto Parts*, 410 U.S. 356 (1973); *Barrett v. Shiparo*, 411 U.S. 910 (1973); *Carrington v. Rash*, 380 U.S. 89 (1966).

The equal protection clause does not prevent classification if the distinction is based on valid state interests. In *Labine v. Vincent*, 401 U.S. 532 (1971), this Court held that Louisiana's intestate succession laws that bar an illegitimate child from sharing equally with legitimate children are not violative of due process or equal protection. This indicates that a state may make valid classifications of children based on legitimacy if grounded upon valid state interests.

The majority opinion of the Supreme Court of Georgia in this case expresses the State's legitimate concern in this situation:

> "Georgia has concern for the well being of all its children. To further the protection and care of its children, Georgia favors and encourages marriage and child bearing in a family relationship. In the case of an illegitimate child, there is no marriage and, most frequently, there is no father to raise the child; instead there is only a mother. It is reasonable for Georgia to place full responsibility for the illegitimate child of the parent who is present. This placing of full parental power in the mother is consistent with the public policy favoring marriage and the family because the father can chooses to join the family,Ga. Code Ann. §74-101, or can petition to legitimate the child. §74-103.
>
> In the usual case, if the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the State's interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the State could be required to server his relationship before the adoption could proceed. In addition, since the father has already shown his lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption. Georgia's interest in seeing to the needs of children is served by the statutory scheme. When the illegitimate child's mother consents to adoption, the State and the mother's interest coincide and the child can be placed with a family.
>
> The State's interest is even stronger under the facts of this case. For eleven (11) years the natural father took no steps to legitimate the child or support him. Yet when the stepfather, married to the child's mother, wishes to adopt the boy and accept responsibility for him, the natural father suddenly opposes legal recognition of this family unit" (A. 82, 83).

This Court has held that the equal protection clause requires that, in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purpose for which the classification is made. *Rinaldi v. Yager*, 384 U.S. 305 (1966). Any statutory discrimination will not

be set aside for violating the equal protection clause if any statement of facts reasonably may be conceived to justify it. *Dandridge v. Williams*, 397 U.S. 471 (1970). The State's interest expressed in the majority opinion certainly satisfies these requirements.

In one case since *Stanley*, this Court has had the opportunity to reconsider the rights of a non-custodial putative father. In that case, this Court refused to automatically rule that he stood in the same position as had Peter Stanley. *Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1972).

The *Rothstein* Court also was presented with a broadly written state statute which declared that a putative father had no rights to notice or to be heard in Wisconsin termination proceedings. As in *Stanley*, there was no question but that the trial court knew of this putative father's existence, was aware of his acknowledgement of paternity, and was apprised of his asserted claim to custody; nevertheless, he was denied a hearing after the mother's rights had been terminated and the child placed with prospective adoptive parents. *State ex rel. Lewis v. Lutheran Social Services*, 47 Wis.2d 420, 178 N.W.2d 56 (1970).

The Wisconsin judgment was vacated by this Court and remanded for further consideration in light of its decision in *Stanley*, but "with due consideration for the completion of the adoption proceedings *and the fact that the child has apparently lived with the adoptive family for the intervening period of time.*" *Rothstein, supra.* (Emphasis supplied). Thus, by the explicit terms of this order handed down subsequent to *Stanley*, this Court has indicated that there are factually distinguishable cases within the broad class of putative fathers and specifically pointed to the interest of the child eligible for adoption as a factor to be weighed in the judicial balance.

Of greatest importance to the consideration of the issues presented in the instant case, however, is this Court's recent dismissal "for want of a substantial federal question" of an appeal from the New York Court of Appeals which upheld

the constitutionality of an adoption statute dispensing with the consent of a father of an illegitimate child despite the fact that he had lived with the mother and child for two years, had admitted paternity in an affiliation proceeding, had been ordered to pay child support, and had apparently complied to some extent with the order. *In re Adoption of Malpica-Orsini*, 36 N.Y.2d 568, 370 N.Y.2d 511, 331 N.E.2d 486 (1975), *appeal dismissed*, 96 S.Ct. 765 (1976) [this case is also sometimes cited as *Orsini v. Blasi*, and will be hereinafter referred to as *Orsini*].

In *Orsini* as in the present case, the father of an illegitimate child was appealing from a decree of adoption granted to a man whom the natural mother had subsequently married. Although under the New York statute no notice of adoption proceedings was required to be given to the putative father, the trial court accorded *Orsini* a full hearing with representation by counsel; therefore, the appellate court held that he had not been denied due process. *Orsini, supra*, 36 N.Y.2d at 576. The same rights were given to Appellant in the present case; thus, by the same rationale, due process was not lacking here.

In *Orsini*, the court emphasized the great benefits of adoption of an out-of-wedlock child from a child-welfare standpoint, and took heed of the apprehension of experts about the effect on adoptions of "the new legalities" engendered by unwed fathers to their children, the New York court concluded that beneficial adoptions would be prevented "or at the very least . . . severely impeded" if unwed fathers were to have the same veto power over the adoption of their children as wed fathers. *Id.*, at 572.

The public policy considerations which weigh against actions such as Appellant's, and in favor of final adoptive placements of illegitimate children are enormous. The best compendium of these policy implications is found, again, in *Orsini*:

> "Illegitimacy and family breakdown have become problems on an unprecedented scale in modern industrial

society. Never before have there been so many children for whom society finds each year that it must make some provision.

To require the consent of fathers of children born out-of-wedlock, or even some of them, would have the overall effect of denying homes to the homeless and depriving innocent children of the other blessings of adoption. The cruel and undeserved out-of-wedlock stigma would continue its visitations.

* * *

Couples considering adoption will be dissuaded out of fear of subsequent annoyance and entanglements . . . The burden on charitable agencies will be oppressive . . . Institutions such as foundling homes which nurture the children for months could not afford to continue their maintenance, in itself not the most desirable, . . . if wards [are] unplaceable. These philanthropic agencies would be reluctant to take infants, for no one wants to bargain for trouble in an already tense situation. The drain on the public treasury would also be immeasurably greater in regard to infants placed in foster homes and public agencies.

Some of the ugliest disclosures of our time involve black marketing of children for adoption. One need not be a clairvoyant to predict that the grant to unwed fathers of the right to veto adoptions will provide a very fertile field for extortion. . . . While it may appear, at first blush, that a father might wish to free himself of the burden of support, there will be many who will interpret it as a chance for revenge or an opportunity to recoup their 'losses.'

Marriages would be discouraged because of the reluctance of prospective husbands to involve themselves in a family situation where they might only be a foster parent and could not adopt the mother's offspring." *Orsini, supra,* at 573-74.

In *Trimble v. Gordon,* 431 U.S. ____, 52 L.Ed.2d ____, 97 S.Ct. 1459, 45 U.S.L.W. 4395, (decided April 26, 1977) [hereinafter cited *Trimble*], the Court held unconstitutional an Illinois statute that permitted only legitimate children to inherit from a father who died intestate. This Court held that this was unconstitutional because it violated the requirement

for equal protection to illegitimate children. This Court stated that in *Trimble* the Illinois Supreme Court had failed to address the relationship between the statute and the promotion of legitimate family relationships and that the statute involved did not have a sufficient relationship to the asserted goal of promoting the family unit.

In this case, Appellees contend that the decision by the Supreme Court of Georgia and the statutory scheme established by the legislature of the State of Georgia do have a direct and obvious relationship to the legitimate state interest of promoting the well being of its children and protecting the stability of the family unit. Therefore, the decision below satisfies the requirements of equal protection where the decision of the Illinois Supreme Court in *Trimble* did not.

In another recent case, this Court has upheld provisions of a federal statute which distinguished between illegitimate children of mothers and those of fathers. *Fiallo v. Bell,* 341 U.S. ____, 52 L.Ed.2d ____, 97 S.Ct. 1473, 45 U.S.L.W. 4402, (decided April 26, 1977) [hereinafter cited as *Fiallo*]. In that case, this Court held constitutional two sections of the Immigration and Nationality Act of 1952 which grants special preference immigration status to "parents" and "children" of American citizens and permanent residents. The definitions in this section include illegitimate children of mothers but not of fathers. In upholding these provisions, this Court relied on the broad congressional power over the admission of aliens into the United States. Appellees submit that the instant case, like *Fiallo,* presents a situation where the State's legitimate interest justifies a disparity in treatment.

III.

APPELLANT SHOULD NOT BE GIVEN THE RIGHT TO OBJECT TO APPELLEE'S PETITION FOR ADOPTION IN THIS CASE BECAUSE HE HAS NOT PROVIDED FINANCIAL SUPPORT FOR THE CHILD AS REQUIRED BY LAW AND HAS NOT OTHERWISE EXPRESSED SUFFICIENT INTEREST IN THE MINOR CHILD.

Throughout his brief, Appellant makes the argument that he should not be discriminated against by not being allowed to object to the adoption of his biological child. Assuming arguendo that some putative fathers should be given this right, Appellees submit that Appellant is not a proper person to object to this adoption because of his lack of financial support for the child and because he has not otherwise expressed sufficient interest in the welfare of the child.

Ga. Code Ann. §74-202 requires the father of an illegitimate child to support that child until majority and reads as follows:

> "The father of an illegitimate child shall be bound to maintain him until said child reaches the age of 18, marries or becomes self-supporting, whichever occurs first. This obligation shall be good consideration to support a contract by him. He may voluntarily discharge this duty; if he shall fail or refuse to do it, the law will compel him; provided, however, that the superior court shall have the power; upon petition of the father, to require the mother of an illegitimate child to contribute to such support upon a determination that the financial circumstances of both the father and the mother are such that justice and equity require the mother to share in, or have responsibility for, such support."

In this case, it is undisputed that Appellant has never supported the child on a regular basis (A. 23). Although he has provided some contributions of food, medical care and money during the early years of the child's life, the primary support of Darrell from the time he was born has been provided by his mother, grandmother and stepfather (A. 22,

A. 40, A. 53).

Also, Appellant has not shown a sufficient interest in the minor child in ways other than financial support. Although the record does indicate that Appellant has visited with the child irregularly and has attempted to give the child presents recently, the record in this case is devoid of any indication that Appellant has made regular attempts to visit with the child or otherwise offer him any type of emotional support.

Assuming arguendo that some putative fathers deserve consideration in situations like those presented in this case, Appellees submit that a distinction should be made based on financial support contributed by the putative father and personal visits or attempted visits made by the putative father on a regular basis.

Appellees would respectfully request the Court to realistically examine situations of women who are left to raise illegitimate children without any financial or emotional support from the child's biological father. Most women in such situations would like nothing more than to have a whole and stable family unit in which the stepfather has completely accepted the mother's child and all family members have the same last name. The biological father should not have the right to preclude such a favorable situation, particularly where he has not provided regular financial or emotional support for the child.

While considering the rights of the putative father in these situations, Appellees would also respectfully request that the Court examine the rights of the most important person involved in this entire situation, the child himself. Where the child's stepfather is willing to adopt him, the child has a right to be adopted and to have the same name as his mother, father and little brother.

In Darrell's mind, the most important aspect of this case is probably the changing of his name from Quilloin to Walcott. This was indicated at the hearing held in this matter when he was asked by counsel for Appellees how he felt about the adoption. Darrell answered simply and eloquently: "I want

my name changed" (A. 67). Only the child himself can fully appreciate the burden he bears in a situation where his last name is different from all of the other members of his family. Appellees would respectfully request that the Court recognize the stigma that Darrell faces in the present situation and to avoid frustrating the obvious wishes of the child in order to protect the rights of a man who has not shown sufficient interest in him from the time he was born.

In addition to Darrell's rights, Appellees would respectfully request that the Court examine their rights in this situation also. Appellee ARDELL WALCOTT has had the primary responsibility for raising this child from its birth without significant financial or emotional support from Appellant. Appellees submit that she should have the final right to determine the outcome of this situation This right is recognized by Ga. Code Ann. §74-203 and Ga. Code Ann. §74-403(3) which are being challenged in this Appeal. Appellee ARDELL WALCOTT indicated her desire to have her child adopted by attaching her consent to the original petition for adoption by Appellee RANDALL WALCOTT (A. 5).

The adopting father is also entitled to have his rights considered in the instant situation. Appellee RANDALL WALCOTT is the person who has provided a home for Darrell for the last eight (8) years. He is the person who has provided the financial and emotional support for Darrell during this period. His rights deserve consideration and as much or more protection as the rights of the biological father who has provided neither financial nor emotional support.

Appellees would also respectfully remind the Court that a decision in Appellant's favor would have a very unsettling effect on adoptions all over the nation. Many of these stable situations would be unsettled and perhaps destroyed if putative fathers were given veto power over adoptions which are in the best interest of the child. The motive of such a person who has not taken sufficient interest to care for the child must be examined carefully. In many of these situations,

including the instant case, the putative father seems more interested in obstructing an orderly situation rather than contributing to the child's welfare. The possibility of blackmail or other improper activities is also apparent in such a situation.

The legislature of the State of Georgia has made a distinction based on financial and emotional support of the minor child in these situations in its revision of the Georgia Adoption Law which becomes effective January 1, 1978. Ga. Acts 1977, pg. 201. The new §74-406 deals with notice to the putative father and sets forth his right to legitimate the minor child.[2]

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[2](a) If the identity and location of the putative father of an illegitimate or legitimate child is known or reasonably ascertainable and he has not executed a surrender as provided in Code §74-404(c), then he shall be notified of the mother's surrender or her consent to the child's adoption to her husband, or the proceeding to terminate her parental rights by registered or certified mail, return receipt requested, at the last known address.

(b) If the identity and location, or either, of the putative father of an illegitimate or legitimate child is not known or reasonably ascertainable then upon motion by either the petitioner(s), Department of Human Resources, or licensed child-placing agency the Court, as soon as practicable, shall make such inquiry as it deems appropriate under the circumstances and shall determine whether the identity and location of the putative father is ascertainable, and whether the putative father lived with the child, contributed to its support, or has given any other tangible indication of interest in the child, so as to entitle him to notice of the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate. If the Court identifies the putative father and determines that he is entitled to notice of the mother's surrender or the proceeding to terminate her parental rights it shall enter an appropriate order designed to afford him such notice. If after inquiry the Court is unable to identify the putative father or concludes that he is not entitled to notice of the mother's surrender or her consent to the child's adoption by her husband, or the proceeding to terminate her parental rights the Court shall enter an order terminating the putative father's rights with reference to the child.

(c) When notice is to be given pursuant to subsection (a) or (b) above, it shall advise the putative father that he loses all rights to the

(continued)

This section gives the putative father the right to legitimate his child within thirty (30) days after receipt of notice that a petition for adoption has been filed. In the instant case, although Appellant did not receive notice of Appellee RANDALL WALCOTT's petition for adoption by registered or certified mail, he did have notice of this petition from agents of the Georgia Department of Family & Childrens Services (A. 57). Prior to this time, Appellant had consulted with his attorney regarding the possible adoption of Darrell (A. 58). These facts indicate that Appellant has had adequate opportunity to protect his interests in this matter.

The record does not indicate the exact date of Appellant's notification of the petition. However, it does indicate that Appellee RANDALL WALCOTT's petition for adoption was filed on March 24, 1976 and Appellant's objection to adoption and petition for legitimation were not filed until May 11, 1976. Appellant has not satisfied the requirements of the new §74-406 and would not have standing to object to Appellees' petition for adoption under the facts of this case if the new statute was applicable.

A new §74-405 deals with situations in which the surrender or termination of parental rights is not required,

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(footnote from preceding page)

child and will neither receive notice nor be entitled to object to the adoption of the child unless he files (1) a petition to legitimate the child pursuant to Code section 74-103, and (2) notice of such petition to legitimate with the court in which the adoption is pending, within thirty (30) days of receipt of such notice.

(d) If a legitimation petition is not filed by the putative father and notice given as required in subsection (c) above within thirty (30) days of his receipt of notice, as provided for in subsection (a) or (b) above, or if after filing such petition, he fails to prosecute it to final judgment he loses all rights to the child and he may not thereafter object to the adoption and is not entitled to receive notice of the adoption.

(e) If the child is legitimated by the putative father, the adoption shall not be permitted except as provided in Code Section 74-403 through 405.

even if a putative father has legitimated his child.[3]

This Code section indicates that the legislature has made a distinction based on financial support and communication which is a large part of the necessary emotional support that any child must have. One who has not provided either on a regular basis should not be allowed to object to the adoption of a minor child which is desired by all other persons who are involved. As mentioned above, Appellant has not complied with his obligation to support the minor child in this case which arises from Ga. Code Ann. §74-202.

IV.

THIS COURT SHOULD NOT APPLY THE NEW GEORGIA ADOPTION STATUTE TO THIS CASE BUT SHOULD APPLY THE LAW AS IT EXISTED AT THE TIME OF THE DECISION OF THE SUPREME COURT OF GEORGIA BECAUSE THE OLD STATUTORY SCHEME AFFORDED APPELLANT SUFFICIENT PROTECTION FOR HIS DUE PROCESS AND EQUAL PROTECTION RIGHTS.

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[3](a) Surrender or termination of parental rights as provided in Code section 74-403 shall not be required as a prerequisite to adoption pursuant to subsections (a)(1), (a)(2), (a)(3) or (a)(4) of Code section 74-403 where a child has been abandoned by a parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from surrendering such rights and the court is of the opinion that the adoption is for the best interest of the child, nor shall a surrender or termination of parental rights as provided in Code section 74-403 be required as a prerequisite to adoption pursuant to subsections (a)(3) or (a)(4) of Code section 74-403 in the case of a parent who has failed significantly without justifiable cause for a period of one year or longer immediately prior to the filing of the petition for adoption

(1) to communicate, or to make a bona fide attempt to communicate with the child or

(2) to provide for the care and support of the child as required by law or judicial decree.

As a general rule, this Court applies the law as it is at the time of decision rather than as it stood at the time of the decision of the Court below. *Kremens v. Bartley*, 431 U.S. ____, 97 S.Ct. 1709, 52 L.Ed.2d 184, 45 U.S.L.W. 451, (decided May 16, 1977); *Sosna v. Iowa*, 419 U.S. 393 (1975). However, this is not always the case and this Court has held that new laws need not always be applied to pending cases in the absence of clear legislative direction to the contrary. *Bradley v. School Board of City of Richmond*, 416 U.S. 696 [hereinafter cited as *Bradley*].

This Court has recognized an exception to the general rule that a court is to apply a law in effect at the time it rendered its decision where this is necessary to prevent manifest injustice. *Bradley, supra; Greene v. United States*, 376 U.S. 149 (1964). In determining whether it would work an injustice to apply a change in the law to a pending case, this Court should consider (a) the nature and identity of the parties, (b) the nature of their rights, (c) the nature of the impact of the change of law on those rights. *Bradley, supra; Thorpe v. Housing Authority of City of Durham*, 393 U.S. 268 (1969).

In the instant case, basing this Court's decision on the old statutory scheme will not deprive Appellant of his due process and equal protection rights because that statutory scheme adequately protected those rights. The problems in this case only arise because Appellant did not take the necessary steps to protect his interest in the minor child.

However, a decision by this Court based on the new adoption statute would give Appellant a virtual veto power over this adoption unless it can be shown that he has not supported the child and has not communicated with the child or made bona fide attempts to communicate with the child for one (1) year prior to the filing of the petition. See, Ga. Acts 1977, pg. 201. Appellees will not be able to bear this burden because the record indicates that Appellant has visited the child within one year prior to the filing of the petition (A. 41, A. 49, A. 60). Therefore, if this case is decided

under the new statute, the adoption that is desired by Darrell and all of the other members of his family will not take place.

Appellees submit that it is not necessary for this Court to remand this case to obtain a decision from the state Court based on the new adoption statute. The only issue involved here is the existence and protection of Appellant's due process and equal protection rights which were adequately protected under the old statutory scheme. Appellees have relied on the old statute and it would be a manifest injustice to eliminate the possibility of an adoption because of a new statute which becomes effective 21 months after the filing of the original petition.

In the past, this Court has been sensitive to injustice which may arise from retrospective application of a change in the applicable law. It has refused to apply an intervening change to a pending action where it has concluded that to do so would infringe unfairly upon the rights of litigants before it. *Claridge Apartments Co. v. Commissioner of Internal Revenue*, 323 U.S. 141 (1944); *Union Pacific R. Co. v. Laramie Stock Yards Co.*, 231 U.S. 190 (1913).

Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in the cases of this Court for avoiding the "injustice or hardship" by a holding of nonretroactivity. *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932). The foremost factor to be considered determining the retroactivity or nonretroactivity is the purpose served by the decision. *Desist v. U.S.*, 394 U.S. 244 (1969); *Tehan v. U.S.*, 382 U.S. 406 (rehearing denied) 383 U.S. 931 (1966).

This Court has held that the Constitution neither prohibits nor requires retrospective application of a judicial decision and that a ruling which is "purely perspective" does not apply even to the parties before the Court. *Linkletter v. Walker*, 381 U.S. 618 (1965). In determining whether and to what extent a new rule should be given retroactive effect, this Court must weigh the merits of the case by looking into the prior history

of the rule in question, its purpose and effect, and whether retroactive application would further or retard its operation. *Linkletter, supra,* accord *Foster v. California,* 394 U.S. 440 (1969); *Jenkins v. Delaware,* 396 U.S. 995 (1969); *Gosa v. Mayden,* 413 U.S. 665 (1973); *Daniel v. Louisiana,* 420 U.S. 31 (1975).

In view of the above authorities, Appellees respectfully request that the Court refrain from remanding this case to the Court of Georgia in the event that this case is decided after January 1, 1978. By so doing, this Court will have protected the interests of Appellees who have relied on the old statutory scheme while protecting the rights of Appellant which were given adequate protection at all stages in this case.

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should affirm the judgment of the Court below.

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